

216308

**PARKER POE**

PARKER POE ADAMS & BERNSTEIN LLP

Attorneys and Counselors at Law

**Faye A. Flowers**

*Special Counsel*

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April 15, 2009

**Via Electronic Filing**

Mr. Charles Terreni

Chief Clerk and Administrator

Public Service Commission of South Carolina

101 Executive Center Drive

Columbia, SC 29210

**Re: *Application of Southern Power Company-South Carolina for a Certificate of Environmental Compatibility and Public Convenience and Necessity***

RECEIVED  
2009 APR 15 PM 3:55  
SOUTH CAROLINA  
PUBLIC SERVICE COMMISSION

Dear Mr. Terreni:

Attached for filing with the Commission please find the above-referenced Application of Southern Power Company-South Carolina. We are also filing via separate electronic filing the Direct Testimony of Robert A. Schaffeld on behalf of Southern Power Company-South Carolina. By copy of this letter we are serving all parties of record with a copy of the Application and Direct Testimony.

Also, via hand delivery today, we are forwarding to the Commission a binder containing Southern Power Company-South Carolina's Application and Direct Testimony for public review and the original Affidavits of Publication which appear at Exhibit 12 of the Application.

If you have any questions, please do not hesitate to contact me.

Sincerely,

*Faye A. Flowers*

Faye A. Flowers

FAF/ccq

Attachments

cc: **All with Application and Direct Testimony:**

C. Earl Hunter, DHEC

C. Dukes Scott, Office of Regulatory Safety

John Frampton, DNR

Chad Pross, SC Parks, Recreation and Tourism

Ben L. Clark, Cherokee County Administrator

The Honorable David Houge, Mayor of Blacksburg

Trudy Martin, Blacksburg Town Administrator

The Honorable L. Hoke Parris, Cherokee County Council Chairman

Rick Peterson, Safety/Emergency Manager Director, Gaffney, SC

CHARLESTON, SC

CHARLOTTE, NC

MYRTLE BEACH, SC

RALEIGH, NC

SPARTANBURG, SC

BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF  
SOUTH CAROLINA

DOCKET NO. 2009-165-E

In Re: Application of Southern Power     )  
Company d/b/a Southern Power            )  
Company-South Carolina for a            )  
Certificate of Environmental                )  
Compatibility and Public Convenience     )  
and Necessity for the Construction and    )  
Operation of a New 230-kV Transmission   )  
Line in Cherokee County, South Carolina   )  
\_\_\_\_\_)

APPLICATION  
FOR A CERTIFICATE  
OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC  
CONVENIENCE AND NECESSITY

RECEIVED  
2009 APR 21 PM 2:55  
PUBLIC SERVICE COMMISSION

Southern Power Company d/b/a Southern Power Company-South Carolina ("Southern Power" or "Company") hereby applies to the Public Service Commission of South Carolina ("Commission") for a Certificate of Environmental Compatibility and Public Convenience and Necessity to construct and operate a new 230-kV transmission line ("transmission line") in northeastern Cherokee County, South Carolina. The transmission line will originate at the natural gas-fired combustion turbine generating facility Southern Power proposes to build in Cleveland County, North Carolina and will interconnect with Duke Energy Carolinas, LLC's Ripp substation near Duke Energy's Mill Creek generating facility in Cherokee County, South Carolina. The Company intends to construct the transmission line entirely within existing right-of-way to be owned by the Company.<sup>1</sup> This Application is filed pursuant to the provisions of S.C.

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<sup>1</sup> The Company is currently engaged in negotiations with the affected landowners for the purchase of rights-of-way. The Company does not anticipate any opposition to the project by these affected landowners and expects to complete the purchase of the necessary rights-of-way shortly. The Company will provide a copy of this Application to the affected landowners and will provide documentation of the successful purchase of the rights-of-way to the Commission upon completion.

Code Ann. § 58-33-10, et seq. (1976 and Supp. 2008), the “Utility Facility Siting and Environmental Protection Act” (“Siting Act”).<sup>2</sup>

In support of this Application, Southern Power respectfully shows to the Commission:

**1. Applicant.** The Company’s current name is Southern Power Company, and its principal office is located at 30 Ivan Allen Jr. Boulevard, N.W., Atlanta, Georgia 30308. Southern Power is a corporation duly organized and existing under the laws of the State of Delaware and is authorized to conduct business in South Carolina as Southern Power Company-South Carolina. In accordance with S.C. Code Ann. § 58-27-1240 (1976 and Cum. Supp. 2008), a certified copy of Southern Power’s Articles of Incorporation is attached as **Exhibit 1** to this Application. A copy of the Company’s authorization to do business in South Carolina is attached to this Application as **Exhibit 2**. The Company is primarily engaged in building, acquiring, generating, transmitting and marketing electricity in the Southeastern United States’ wholesale energy market.

**2. Financial Fitness and Viability.** Southern Power is a wholly-owned, first-tier subsidiary of The Southern Company. As part of its 2008 Form 10-K Annual Report, filed with the United States Securities and Exchange Commission on February 25, 2009, The Southern Company included financial statements for Southern Power. These statements (pages 366-406 of the 2008 Form 10-K) demonstrate Southern Power’s financial condition and are attached to this Application as **Exhibit 3**. (See e.g. Income Statement on page 369)

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<sup>2</sup> The Company has, concurrent with the filing of this South Carolina application, filed an application for the North Carolina portion of the project with the North Carolina Utilities Commission.

**3. Correspondence or Communications.** The names, titles, addresses and telephone numbers and other contact information of the attorneys and company contacts for the applicant to whom correspondence or communications relating to the Application should be addressed are as follows:

W. Edward Poe, Jr.  
Parker Poe Adams & Bernstein LLP  
401 South Tryon Street, Suite 3000  
Charlotte, North Carolina 28202  
704-335-9051  
[eddiepoe@parkerpoe.com](mailto:eddiepoe@parkerpoe.com)

Faye A. Flowers, Esq.  
Parker Poe Adams & Bernstein LLP  
1201 Main Street, Suite 1450  
Columbia, South Carolina 29201  
803-253-8912  
[fayeflowers@parkerpoe.com](mailto:fayeflowers@parkerpoe.com)

AND

Kevin Gammill  
Southern Power Company  
600 North 18th Street, 15N-8198  
Birmingham, Alabama 35291  
205-257-3928  
[kgammill@southernco.com](mailto:kgammill@southernco.com)

**4. Project Description.**

NAME OF LINE: Cleveland County Generating Facility 230-kV Bus Line.

EXTENDING FROM: Southern Power's Cleveland County, North Carolina Plant.

TO: Ripp substation in Cherokee County, South Carolina.

ESTIMATED LENGTH: 0.9 mile within South Carolina; 1.8 miles (total length of line).

WIDTH OF RIGHT-OF-WAY: 125 feet.

DESIGN VOLTAGE: 230-kV.

NORMAL CAPACITY: 1150 MVA.

CONDUCTOR: 1351 ACSS (steel supported) or 1351 ACSR (steel stranded).

CONFIGURATION: Bundled conductor.

TYPE OF STRUCTURES: Steel H-Frame, except some structures may be concrete.

NOMINAL HEIGHT: 90-140 feet.

AREAS IN WHICH FACILITIES ARE TO BE LOCATED IN SOUTH CAROLINA:

COUNTY: Cherokee County; a map of the project area is attached to this Application as **Exhibit 4**.

MUNICIPALITIES: None.

NATIONAL STATE PARKS OR FORESTS DIRECTLY AFFECTED OR THE NEAREST FACILITY: None are directly affected. The nearest park is The Kings Mountain National Military Park which is approximately two miles east of the nearest location of the Cleveland County Generating Facility 230-kV Bus Line.

OTHER AREAS TO BE CONSIDERED OR CROSSED:

DESIGNATED HISTORIC, SCENIC AND RECREATIONAL: None.

MAJOR WATERS: None.

MAJOR HIGHWAYS: None; however, the transmission line will twice cross above Mill Creek Road, a rural, paved county road. A letter showing that applicant has received the consent of local authorities

for the line to cross over Mill Creek Road in accordance with S.C. Code Ann. § 58-27-1240 (1976 and Cum. Supp. 2008) and Article VIII, Section 15 of the South Carolina Constitution is attached to this Application as **Exhibit 5**.

COST: Approximately \$1.5 million for the South Carolina portion of the transmission line.

**5. Need and Necessity.** The southern terminus of the South Carolina segment of the transmission line will interconnect with Duke Energy's Ripp substation where the power generated at Southern Power's proposed generating facility will flow onto Duke Energy's transmission system. A copy of the Interconnection Agreement between Duke Energy and Southern Power is attached to this Application as **Exhibit 6**. From the Ripp substation, Southern Power's transmission line will run due north paralleling an existing Duke Energy 230-kV line, then east-northeast until it reaches the boundary between South Carolina and North Carolina (a total distance in South Carolina of approximately 0.9 mile). From that point, the North Carolina portion of the Company's transmission line will run due east, then north (a total distance in North Carolina of approximately 0.9 mile) to its northern terminus at the switchyard of the Company's proposed generating facility.

Southern Power has entered into long-term power purchase agreements ("PPAs") with North Carolina Municipal Power Agency No. 1 ("NCMPA 1") and North Carolina Electric Membership Corporation ("NCEMC") for approximately 75% (540 MW) of the output of the proposed generating facility as initially constructed (4 units @ 180 MW

each). Summaries of the PPAs with NCMPA 1 and NCEMC are attached to this Application as **Exhibits 7 and 8**.

Southern Power has used a number of sources to assess the supply of and demand for electricity in North Carolina and the SERC Reliability Corporation (“SERC”) region. The compound annual growth rate over the next ten years is 1.94 percent in the SERC area, according to the North American Electric Reliability Corporation (“NERC”) 2008 Long-Term Reliability Assessment 2008-2017. Duke Energy Carolinas, LLC projects an average annual territorial energy need of 1.5 percent, without accounting for the impacts of new energy efficiency measures, over the next twenty years. If the impacts of new energy efficiency measures are included, the projection remains at 1.4 percent. (Duke Energy Carolinas 2008 Integrated Resource Plan page 37; PSC Docket No. 2005-356-E; NCUC Docket No. E-100, Sub 118 (November 3, 2008)). Similarly, Progress Energy Carolinas projects a retail demand growth of 1.7 percent without accounting for demand side management and 1.0 percent after adjusting for demand side management. (Progress Energy Carolinas 2008 Integrated Resource Plan, page 4; PSC Docket No. 2006-174-E; NCUC Docket No. E-100, Sub 118 (September, 2, 2008)). Both Duke and Progress show a need for additional generation to come on line in the 2011-2012 timeframe (Duke 2008 IRP pages 43-44; Progress 2008 IRP page 18). Progress Energy expects a 13 percent summer reserve margin in 2010 in its service territory and a 17 percent summer reserve margin in 2011 with 600 MW of additional combined cycle capacity at the Richmond County, North Carolina facility. (Progress 2008 IRP page 18). Similarly, by 2011, Duke Energy Carolinas forecasts that it will need an additional 2,300 MW of

generation to maintain a targeted 17 percent reserve margin. (Duke 2008 IRP pages 48-49).

Based on its assessments, Southern Power has concluded that there is a need for additional peaking capacity in North Carolina. Additional wholesale generation is essential to meet the current and future needs for electricity in North Carolina. The transmission line, which is the subject of this Application, is needed to tie the four combustion turbine generators Southern Power proposes to construct, totaling 720 MW, to the transmission system in order to deliver electricity from these facilities. The Duke Energy Ripp substation located in South Carolina was chosen as the tie in point because there was no economical North Carolina tie in available.

In addition, this 230-kV transmission line will serve the interests of system economy and reliability by improving and enhancing the major transmission line network serving customers of Duke Energy Carolinas. Although the proposed project will not serve any South Carolina customers at this time, this transmission line will increase the reliability and economy of Duke Energy's service area, including the Piedmont region of South Carolina, by providing reliable peaking power and, thus, South Carolina consumers will ultimately benefit.

**6. Environmental Report.** The proposed transmission line will have no significant environmental impact for the following reasons:

- a. much of the approximate 0.9 mile length will parallel an existing Duke Energy Carolinas 230-kV transmission line on steel lattice towers on a 150-foot wide right-of-way;



b. a portion of the transmission line will be constructed near and over Vulcan Material's Blacksburg Quarry where rock mining operations have been conducted for years;

c. the line and 125-foot right-of-way are in a remote, unincorporated, rural area which crosses only three landowners, and rights-of-way from these owners will be provided to the Commission;

d. the bundled electrical conductors will be placed on H-frame steel and concrete pole structures approximately 500-800 feet apart depending on topography with a conductor height of 90-140 feet above ground;

e. the right-of-way for the line is not located in proximity to any houses, churches, commercial buildings or structures, so its visual impact will be minimal;

f. no biological, botanical, cultural, archeological, wetlands, threatened or endangered plant or animal species, wildlife or other significant natural or human resources will be affected by the imposition of the right-of-way or the construction and operation of the transmission line; and

g. the right-of-way area will be maintained by selective tree clearing, mowing and vegetation control so as to protect the integrity of the line. Agricultural and other compatible uses will be permitted within the right-of-way. There are no projected impacts to wetlands along the transmission line route; nevertheless, herbicide will be used sparingly to reduce the potential that it might contaminate any aquatic resources.

h. the route selected has minimal overall social and environmental impact.

A comprehensive environmental report on the area traversed by the line and effects of the line and right-of-way is attached to this Application as **Exhibit 9**.

**7. Conformance with State and Local Law.** The proposed transmission line will conform to all applicable state and local laws and regulations issued thereunder, including any allowable variance provisions therein.

**8. Proof of Service.** **Exhibit 10**, attached to this Application and made a part hereof, is proof of service of a copy of this Application pursuant to S.C. Code Ann. § 58-33-120(2) on the Chief Executive Officer of each municipality and head of each state and local government agency charged with the duty of protecting the environment or of planning land use in the area of the county in which any portion of the transmission line is to be located.

**9. Public Notice.** Attached as **Exhibit 11** and made a part hereof, is the public notice given to persons residing in the municipalities entitled to receive notice pursuant to S.C. Code Ann. § 58-33-120(3) by publication of a summary of the Application, the date on or about which it is to be filed, and the newspapers of general circulation in which such notice was published. This notice served to inform such persons of the filing of this Application. Affidavits of publication from the various newspapers identified are attached as **Exhibit 12**.

WHEREFORE, having fully complied with the requirements of the Siting Act, Southern Power Company-South Carolina respectfully requests that the Commission issue a Certificate of Environmental Compatibility and Public Convenience and Necessity for the project described herein.

Respectfully submitted this 15<sup>th</sup> day of April, 2009.

SOUTHERN POWER COMPANY-SOUTH CAROLINA

By: Faye A. Flowers  
Faye A. Flowers  
Parker Poe Adams & Bernstein LLP  
1201 Main Street, Suite 1450  
Columbia, South Carolina 29201  
803-253-8912  
fayeflowers@parkerpoe.com

W. Edward Poe, Jr. (to be admitted *pro hac vice*)  
Parker Poe Adams & Bernstein LLP  
401 South Tryon Street, Suite 3000  
Charlotte, North Carolina 28202  
704-335-9051  
eddiepoe@parkerpoe.com

*ATTORNEYS FOR THE APPLICANT*

## **EXHIBITS**

1. Certified Copy of Southern Power Company's Articles of Incorporation
2. Copy of Southern Power Company's Certificate of Authority to Transact Business in South Carolina
3. Southern Power Company's Form 10-K December 31, 2008 (pages 366-406)
4. Map of Transmission Line
5. Letter from Cherokee County Administrator
6. Interconnection Agreement
7. Summary of Power Purchase Agreement with NCMPA 1
8. Summaries of Power Purchase Agreements with NCEMC
9. Environmental Reports
10. Proof of Service
11. Public Notice
12. Affidavits of Publication

**BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF  
SOUTH CAROLINA**

**Docket No. 2009-\_\_\_\_-E**

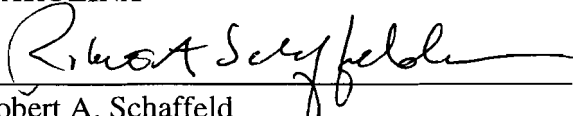
**In Re: Application of Southern  
Power Company d/b/a Southern Power  
Company-South Carolina for a  
Certificate of Environmental  
Compatibility and Public Convenience  
and Necessity for the Construction and  
Operation of a New 230-kV Transmission  
Line in Cherokee County, South  
Carolina**

**VERIFICATION**

I, Robert A. Schaffeld, being duly sworn according to law, depose and say that:


1. I am the Director of Compliance and Corporate Affairs of Southern Power Company-South Carolina, the Applicant in the above case, and in that capacity have knowledge of the matters stated therein;
2. I am authorized to and do make this Certification for the Applicant;
3. I have reviewed the Application and exhibits and attachments thereto and the information contained therein is correct to the best of my knowledge and, as to any matters alleged on information and belief, I believe them to be true.

**SOUTHERN POWER COMPANY-SOUTH  
CAROLINA**

  
Robert A. Schaffeld

SWORN to before me this

8 day of April, 2009

  
Notary Public for the State of Alabama  
My Commission Expires: 1/19/2010

# Delaware

PAGE 1

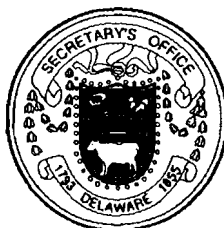
*The First State*


I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "SOUTHERN POWER COMPANY", FILED IN THIS OFFICE ON THE EIGHTH DAY OF JANUARY, A.D. 2001, AT 9 O'CLOCK A.M.

3341462 8100

090215917

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 7180348

DATE: 03-11-09

**CERTIFICATE OF INCORPORATION  
OF  
SOUTHERN POWER COMPANY**

I.

The name of the corporation is Southern Power Company (the "Corporation").

II.

The initial registered office of the Corporation in the State of Delaware shall be located at 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808. The initial registered agent of the Corporation at such address shall be Corporation Service Company.

III.

The purpose or purposes for which the Corporation is organized shall be to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

IV.

The Corporation shall be authorized to issue One Million (1,000,000) shares of \$0.01 par value capital stock, all of which shall be designated "Common Stock." The shares of Common Stock shall have unlimited voting rights and shall be entitled to receive all of the net assets of the Corporation upon dissolution or liquidation.

V.

The affairs of the Corporation shall be managed by a Board of Directors and as otherwise provided in the Bylaws of the Corporation. The initial Board of Directors of the corporation shall consist of five members, whose names are as follows:

A. W. Dahlberg  
H. Allen Franklin  
Elmer B. Harris  
Charles D. McCrary  
David M. Ratcliffe  
W. L. Westbrook

The mailing address of the directors is c/o The Southern Company, 270 Peachtree Street, Atlanta, Georgia 30303.

VI.

The Corporation shall have perpetual duration.

VII.

The Board of Directors of the Corporation shall have the power to adopt, amend and repeal the Bylaws of the Corporation.

VIII.

To the fullest extent that the General Corporation Law of Delaware, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of directors, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of duty of care or other duty as a director. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

IX.

The name and address of the Incorporator of the Corporation is Melissa K. Caen, Troutman Sanders LLP, 600 Peachtree Street, N.E., Suite 5200, Atlanta, Georgia 30308.

I, the undersigned, being the Incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 8th day of January, 2001.



Melissa K. Caen,



# *The State of South Carolina*



*Office of Secretary of State Mark Hammond*

## **Certificate of Authorization**

**I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:**

**SOUTHERN POWER COMPANY,**  
a corporation duly organized under the laws of the state of **DELAWARE** and issued a certificate of authority to transact business in South Carolina on **March 31st, 2009**, has on the date hereof filed all reports due this office, paid all fees, taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the Corporation that its authority to transact business in South Carolina is subject to being revoked pursuant to Section 33-15-310 of the 1976 South Carolina Code, and no application for surrender of authority to do business in South Carolina has been filed in this office as of the date hereof.

Given under my Hand and the Great  
Seal of the State of South Carolina this  
31st day of March, 2009.

A handwritten signature in cursive script that reads "Mark Hammond".  
Mark Hammond, Secretary of State

Note: This certificate does not contain any representation concerning fees or taxes owed by the Corporation to the South Carolina Tax Commission or whether the Corporation has filed the annual reports with the Tax Commission. If it is important to know whether the Corporation has paid all taxes due to the State of South

CERTIFIED TO BE A TRUE AND CORRECT COPY  
AS TAKEN FROM AND COMPARED WITH THE  
ORIGINAL ON FILE IN THIS OFFICE

STATE OF SOUTH CAROLINA  
SECRETARY OF STATE

MAR 31 2009

ADOPTION OF A FICTITIOUS NAME  
Corporation - Foreign  
Filing Fee - \$10.00

*Mark Hammond*  
SECRETARY OF STATE OF SOUTH CAROLINA

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to S.C. Code of Laws §33-15-106, the undersigned submits the following:

1. Applicant's Name (Individual submitting form) Laura I. Patterson
2. The legal name of the corporation is Southern Power Company
3. Enter the date that the Board of Directors adopted the resolution to use the fictitious name March 12, 2009
4. Enter the Fictitious Name that the Board of Directors adopted to use for conducting business in the state of  
South Carolina Southern Power Company - South Carolina
5. By signing and submitting this form you are affirming that the Board of Directors of the corporation duly adopted the resolution to use a fictitious name in South Carolina for conducting all business at a duly called meeting of the Board. A quorum was present for the meeting and the resolution was set forth in the minutes of the meeting. Additionally, you are the keeper of the corporate seal and of the minutes and records of the corporation and the said resolution has not been rescinded or modified.

Date 3/19/2009

*Laura I. Patterson*  
Signature of Applicant

Laura I. Patterson

Print Name of Applicant

Comptroller and Corporate Secretary

Capacity/Position of Applicant

Filing Checklist

- Fictitious Name form (filed in duplicate)
- \$10.00 made payable to the South Carolina Secretary of State
- Self-Addressed, Stamped Return Envelope
- Return all documents to: South Carolina Secretary of State's Office  
Attn: Corporate Filings  
P.O. Box 11350  
Columbia, SC 29211

## **CERTIFIED RESOLUTION**

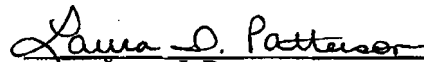
*Extract from unanimous written consent in lieu of a meeting of the Board of Directors of Southern Power Company on March 12, 2009.*

\* \* \* \* \*

**RESOLVED:** That the Company adopts the fictitious name Southern Power Company – South Carolina, under which it will operate in South Carolina because its corporate name is not available for use in South Carolina, and that the secretary of the Company is authorized to certify a copy of this resolution and is directed to deliver the copy of the resolution to the Secretary of State of the State of South Carolina for filing.

\* \* \* \* \*

*The undersigned officer of Southern Power Company does hereby certify that the foregoing is a true and correct copy of the resolution duly adopted by unanimous written consent in lieu of a meeting of the Board of Directors of Southern Power Company on March 12, 2009.*

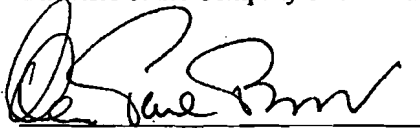
  
Laura I. Patterson  
Secretary

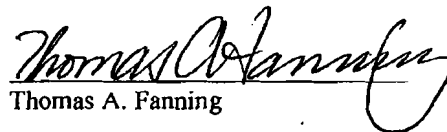
UNANIMOUS WRITTEN CONSENT OF DIRECTORS OF  
SOUTHERN POWER COMPANY  
TO ADOPTION OF ACTIONS AND  
RESOLUTION IN LIEU OF MEETING

The undersigned, being all the members of the Board of Directors of Southern Power Company, a Delaware corporation (the "Company"), by written consent pursuant to the Delaware General Corporation Law, do hereby adopt as of March 12, 2009, the following resolution:

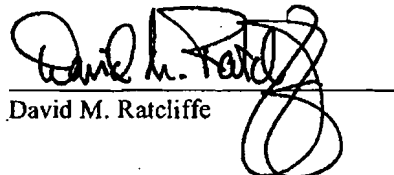
RESOLVED: That the Company adopts the fictitious name Southern Power Company – South Carolina, under which it will operate in South Carolina because its corporate name is not available for use in South Carolina, and that the secretary of the Company is authorized to certify a copy of this resolution and is directed to deliver the copy of the resolution to the Secretary of State of the State of South Carolina for filing.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands as Directors of the Company effective as of the day and year first above written.

  
William Paul Bowers

  
Thomas A. Fanning

  
G. Edison Holland, Jr.

  
David M. Ratcliffe

CERTIFIED TO BE A TRUE AND CORRECT COPY  
AS TAKEN FROM AND COMPARED WITH THE  
ORIGINAL ON FILE IN THIS OFFICE

STATE OF SOUTH CAROLINA  
SECRETARY OF STATE

MAR 31 2009

APPLICATION BY A FOREIGN CORPORATION  
FOR A CERTIFICATE OF AUTHORITY  
TO TRANSACT BUSINESS  
IN THE STATE OF SOUTH CAROLINA

SECRETARY OF STATE OF SOUTH CAROLINA

TYPE OR PRINT CLEARLY WITH BLACK INK

Pursuant to Section 33-15-103 of the 1976 South Carolina Code of Laws, as amended, the undersigned corporation hereby applies for authority to transact business in the State of South Carolina, and for that purpose, hereby submits the following statement:

1. The name of the corporation is (see Sections 33-4-101 and 33-15-106 and Section 33-19-500(b)(1) if the corporation is a professional corporation) Southern Power Company - South Carolina.
2. It is incorporated as (check applicable item) [☒] a general business corporation, [☐] a professional corporation, under the laws of the state of \_\_\_\_\_.
3. The date of its incorporation is 1/8/2001 and the period of its duration is perpetual.
4. The address of the principal office of the corporation is 30 E. On Allen Fr. Blvd. in the city of Atlanta, Georgia and the state of 30308.  
Street Address Zip Code
5. The address of the proposed registered office the state of South Carolina is 1703 Laurel Street in the city of Columbia in South Carolina 29201.  
Street Address Zip Code
6. The name of the proposed registered agent in this state at such address is Corporation Service Company.  
Print Name

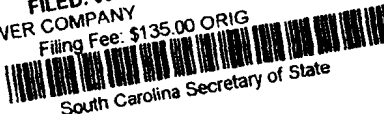
I hereby consent to the appointment as registered agent of the corporation.

Corporation Service Company

By: Kirkodi Jackson, Asst. Secretary

Signature of the Registered Agent

090331-0267  
SOUTHERN POWER COMPANY  
Filing Fee: \$135.00 ORIG



Mark Hammond

Southern Power Company - South Carolina  
Name of Corporation

7. The name and usual business address of the corporation's directors (if the corporation has no directors, then the name and address of the persons who are exercising the statutory authority of the directors on behalf of the corporation) and principal officers:

a)	Name of Directors	Business Address
	<u>W. Paul Bowers</u>	<u>30 Ivan Allen Jr. Blvd., Atlanta, GA 30308</u>
	<u>Thomas A. Fanning</u>	<u>30 Ivan Allen Jr. Blvd., Atlanta, GA 30308</u>
	<u>G. Edison Holland</u>	<u>30 Ivan Allen Jr. Blvd., Atlanta, GA 30308</u>
	<u>David M. Ratcliffe</u>	<u>30 Ivan Allen Jr. Blvd., Atlanta, GA 30308</u>
b)	Name and Office of Principal Officers	Business Address
	<u>Please see attached Exhibit A</u>	<u></u>
	<u></u>	<u></u>
	<u></u>	<u></u>
	<u></u>	<u></u>

8. The aggregate number of shares which the corporation has authority to issue, itemized by classes and series, if any, within a class:

Class of Shares (and Series, if any)	Authorized Number of Each Class (and Series)
<u>Common Stock</u>	<u>1,000,000</u>
<u></u>	<u></u>
<u></u>	<u></u>
<u></u>	<u></u>

9. Unless a delayed date is specified, this application shall be effective when accepted for filing by the Secretary of State (See Section 33-1-230): \_\_\_\_\_

Date 3/19/2009

Southern Power Company - South Carolina  
Name of Corporation

Laura I. Patterson  
Signature

Laura I. Patterson, Comptroller & Corporate Sec.  
Type or Print Name and Office

Southern Power Company - South Carolina  
Name of Corporation

FILING INSTRUCTIONS

1. Two copies of this form, the original and either a duplicate original or a conformed copy, must be filed.
2. If the space in this form is insufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form.
3. Schedule of Fees (Payable at the time of filing this document):

Fee for filing Application	\$10.00
Filing Tax	\$100.00
Annual Report	\$25.00
Total	\$135.00
4. This form must be accompanied by the initial annual report of corporations and an original certificate of existence no more than 30 days old from the official state of jurisdiction where the corporation is incorporated.
5. If the applicant corporation's domestic name is unavailable in South Carolina, then it must file a certified copy of the board of directors resolution approving the fictitious name along with this application pursuant to Section 33-15-106(a)(2). (additional \$10 filing fee)
6. If the applicant is a foreign professional corporation, then in addition to satisfying the name requirements in Sections 33-19-150 and 33-19-500(b)(1), the following information must be included in the application:
  - a) A statement that the corporation's sole business purpose is to engage in a specified form of professional services (e.g. Law firm).
  - b) A statement that all of its shareholders, not less than one-half of its directors, and all of its officers other than its secretary or treasurer, if any, are licensed in one or more states to render a professional service described in their titles of incorporation.

Return to: Secretary of State  
P.O. Box 11350  
Columbia, SC 29211

NOTE

THE FILING OF THIS DOCUMENT DOES NOT, IN AND OF ITSELF, PROVIDE AN EXCLUSIVE RIGHT TO USE THIS CORPORATE NAME ON OR IN CONNECTION WITH ANY PRODUCT OR SERVICE. USE OF A NAME AS A TRADEMARK OR SERVICE MARK WILL REQUIRE FURTHER CLEARANCE AND REGISTRATION AND BE AFFECTED BY PRIOR USE OF THE MARK. FOR MORE INFORMATION, CONTACT THE TRADEMARKS DIVISION OF THE SECRETARY OF STATE'S OFFICE AT (803) 734-1728.

**EXHIBIT A**

**State of South Carolina  
Secretary of State**

**Application by a Foreign Corporation  
for a Certificate of Authority  
to Transact Business  
in the State of South Carolina**

7(b). The names, offices, and business addresses of the principal officers of Southern Power Company – South Carolina are listed below:

**Principal Officers:**

Ronnie Bates, President & CEO  
600 N. 18<sup>th</sup> St., Birmingham, AL 35203

Michael Southern, Sr., Vice President, CFO & Treasurer  
30 Ivan Allen Jr. Blvd, Atlanta, GA 30308

Laura Patterson, Comptroller & Corporate Secretary  
30 Ivan Allen Jr. Blvd, Atlanta, GA 30308

Wayne Boston, Assistant Secretary  
30 Ivan Allen Jr. Blvd, Atlanta, GA 30308



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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM 10-K**

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934**

For the Fiscal Year Ended December 31, 2008

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934**

For the Transition Period from            to

<u>Commission File Number</u>	<u>Registrant, State of Incorporation, Address and Telephone Number</u>	<u>I.R.S. Employer Identification No.</u>
1-3526	<b>The Southern Company</b> (A Delaware Corporation) 30 Ivan Allen Jr. Boulevard, N.W. Atlanta, Georgia 30308 (404) 506-5000	
1-3164	<b>Alabama Power Company</b> (An Alabama Corporation) 600 North 18th Street Birmingham, Alabama 35291 (205) 257-1000	
1-6468	<b>Georgia Power Company</b> (A Georgia Corporation) 241 Ralph McGill Boulevard, N.E. Atlanta, Georgia 30308 (404) 506-6526	
0-2429	<b>Gulf Power Company</b> (A Florida Corporation) One Energy Place Pensacola, Florida 32520 (850) 444-6111	
001-11229	<b>Mississippi Power Company</b> (A Mississippi Corporation) 2992 West Beach Gulfport, Mississippi 39501 (228) 864-1211	
333-98553	<b>Southern Power Company</b> (A Delaware Corporation) 30 Ivan Allen Jr. Boulevard, N.W. Atlanta, Georgia 30308 (404) 506-5000	

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Table of Contents

**SOUTHERN POWER COMPANY  
FINANCIAL SECTION**

II-365

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Table of Contents

**MANAGEMENT'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING**  
**Southern Power Company and Subsidiary Companies 2008 Annual Report**

he management of Southern Power Company (the "Company") is responsible for establishing and maintaining an adequate system of internal control over financial reporting as required by the Sarbanes-Oxley Act of 2002 and as defined in Exchange Act Rule 13a-15(f). A control system can provide only reasonable, not absolute, assurance that the objectives of the control system are met.

nder management's supervision, an evaluation of the design and effectiveness of the Company's internal control over financial reporting was conducted based on the framework in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management concluded that the Company's internal control over financial reporting was effective as of December 31, 2008.

his Annual Report does not include an attestation report of the Company's independent registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the Company's independent registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit the Company to provide only management's report in this Annual Report.

/ Ronnie L. Bates

ronnie L. Bates  
resident and Chief Executive Officer

/ Michael W. Southern

ichael W. Southern  
enior Vice President and Chief Financial Officer

February 25, 2009

Table of Contents

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

**Southern Power Company**

We have audited the accompanying consolidated balance sheets of Southern Power Company and Subsidiary Companies (the "Company") (a wholly owned subsidiary of Southern Company) as of December 31, 2008 and 2007, and the related consolidated statements of income, comprehensive income, common stockholder's equity, and cash flows for each of the three years in the period ended December 31, 2008. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements (pages II-387 to II-405) present fairly, in all material respects, the financial position of Southern Power Company and Subsidiary Companies at December 31, 2008 and 2007, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2008, in conformity with accounting principles generally accepted in the United States of America.

/s/ Deloitte & Touche LLP

Atlanta, Georgia  
February 25, 2009

## **MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

### **Southern Power Company and Subsidiary Companies 2008 Annual Report**

#### **OVERVIEW**

##### **Business Activities**

Southern Power Company and its wholly-owned subsidiaries (the Company) construct, acquire, own, and manage generation assets and sell electricity at market-based prices in the wholesale market. The Company continues to execute its strategy through a combination of acquiring and constructing new power plants and by entering into power purchase agreements (PPAs) with investor owned utilities, independent power producers, municipalities, and electric cooperatives.

In June 2008, the Company completed construction of Plant Franklin Unit 3, a combined cycle unit located in Smiths, Alabama with a nameplate capacity of 659 megawatts (MW). The Company has a PPA covering the entire output of this unit from January 2009 through December 2015.

In December 2008, the Company announced that it will build an electric generating plant in Cleveland County, North Carolina. This plant will consist of four combustion turbine natural gas generating units with a total expected generating capacity of 720 MW. The units are expected to go into commercial operation in 2012. The Company also entered into long-term PPAs for 540 MW of the generating capacity of the plant.

As of December 31, 2008, the Company had units totaling 7,555 MW nameplate capacity in commercial operation. The weighted average duration of the Company's wholesale contracts exceeds 13.3 years, which reduces remarketing risk. The Company's future earnings will depend on the parameters of the wholesale market, federal regulation, and the efficient operation of its wholesale generating assets. See FUTURE EARNINGS POTENTIAL — "FERC Matters" herein for additional information.

##### **Key Performance Indicators**

To evaluate operating results and to ensure the Company's ability to meet its contractual commitments to customers, the Company focuses on several key performance indicators. These indicators include plant availability, peak season equivalent forced outage rate (EFOR), and net income. Plant availability measures the percentage of time during the year that the Company's generating units are available to be called upon to generate (the higher the better), whereas the EFOR more narrowly defines the hours during peak demand times when the Company's generating units are not available due to forced outages (the lower the better). Net income is the primary component of the Company's contribution to Southern Company's earnings per share goal. The Company's actual performance in 2008 met or surpassed targets in these key performance areas. See RESULTS OF OPERATIONS herein for additional information on the Company's financial performance.

##### **Earnings**

The Company's 2008 earnings were \$144.4 million, a \$12.7 million increase over 2007. This increase was primarily the result of increased capacity sales to requirements service customers, market sales of uncontracted generating capacity, a gain on the sale of an undeveloped tract of land in 2008, a loss on the gasifier portion of the Integrated Coal Gasification Combined Cycle (IGCC) project in 2007, and the receipt of a fee for participating in an asset auction in 2008. The Company was not the successful bidder in the asset auction. These increases were partially offset by transmission service expenses and tariff penalties incurred in 2008, timing of plant maintenance activities, increased general and administrative expenses associated with the implementation of the Federal Energy Regulatory Commission (FERC) separation order, and increased depreciation associated with Plant Oleander Unit 5 and Plant Franklin Unit 3 being placed into commercial operation in December 2007 and June 2008, respectively.

The Company's 2007 earnings were \$131.6 million, a \$7.2 million increase over 2006. This increase was primarily the result of increased energy sales due to more favorable weather in 2007. Also contributing to the increase were additional sales from the acquisition of Plant Rowan in September 2006. These increases were partially offset by the \$10.7 million after tax loss as a result of the termination of the construction of the gasifier portion of the IGCC project.

The Company's 2006 earnings were \$124.4 million, a \$9.7 million increase over 2005. This increase was primarily the result of new PPAs entered or acquired in the period, including contracts with Piedmont Municipal Power Authority (PMPA) and EnergyUnited Electric Membership Corporation (EnergyUnited) and the PPAs related to the acquisition of Plants DeSoto and Rowan in June 2006 and September 2006, respectively. Short-term energy sales and increased sales from existing resources also contributed to this increase.

**MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)**  
**Southern Power Company and Subsidiary Companies 2008 Annual Report**

**RESULTS OF OPERATIONS**

condensed statement of income follows:

	Amount	Increase (Decrease)		
	2008	2008	2007	2006
		(in millions)		
Operating revenues	\$ 1,313.6	\$ 341.5	\$ 105.0	\$ 777.0
Interest	424.8	186.1	93.4	(63.8)
Depreciation	328.0	178.1	39.7	10.7
Other operations and maintenance	147.7	12.7	39.7	14.5
Loss on sale of property	(6.0)	(6.0)	—	—
Amortization and depletion	17.7	2.0	0.2	2.3
Operating expenses	1,000.7	319.8	143.2	757.5
Operating income	312.9	21.7	6.8	20.6
Interest expense	83.2	4.0	(1.0)	0.8
Income before income taxes	229.7	17.7	7.8	19.8
Income taxes	85.3	4.0	(1.0)	0.8
Net Income	\$ 144.4	\$ 12.7	\$ 7.2	\$ 9.7

**Operating Revenues**

Operating revenues in 2008 were \$1.31 billion, a \$341.5 million (35.1%) increase from 2007. This increase was primarily due to increased short-term energy revenues from uncontracted generating units, increased energy revenues due to higher natural gas prices, and increased revenues from a full year of operations at Plant Ogleander Unit 5. These increases were partially offset by decreased demand under existing PPAs due to less favorable weather in 2008 compared to 2007. The increase in fuel revenues was accompanied by an increase in related fuel costs and did not have a significant impact on net income.

Operating revenues in 2007 were \$972 million, a \$195.0 million (25.1%) increase from 2006. This increase was primarily due to increased short-term energy sales, a full year of operations at Plant Rowan acquired in September 2006, new sales with EnergyUnited, increased demand under existing PPAs with affiliates as a result of favorable weather within the Southern Company service territory, and higher fuel revenues due to an increase in natural gas prices in 2007. The increase in fuel revenues was accompanied by an increase in related fuel costs and did not have a significant impact on net income.

Operating revenues in 2006 were \$777.0 million, a \$4.0 million (0.5%) decrease from 2005. This decrease was primarily due to reduced energy revenues as a result of lower natural gas prices. This reduction was accompanied by a reduction in related fuel costs and did not have a significant net income impact. Offsetting this energy-related reduction were increased sales from a full year of operations at Plant Ogleander and new sales under PPAs with PMPA and EnergyUnited and those PPAs acquired in the DeSoto and Rowan acquisitions. See FUTURE EARNINGS POTENTIAL — “Power Sales Agreements” herein and Note 2 to the financial statements under “DeSoto and Rowan Acquisitions” for additional information.

Capacity revenues are an integral component of the Company's PPAs with both affiliate and non-affiliate customers and represent the greatest contribution to net income. Energy under PPAs is generally sold at variable cost or is indexed to published gas indices. Energy revenues also include fees for support services, fuel storage, and unit start charges. Details of these PPA capacity and energy revenues are as follows:

MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)  
Southern Power Company and Subsidiary Companies 2008 Annual Report

	2008	2007	2006
		(in millions)	
<b>Wholesale Revenues</b>			
Affiliates	\$ 279.2	\$ 279.7	\$ 279.1
Non-affiliates	165.2	166.8	169.9
<b>Total</b>	<b>444.4</b>	<b>446.5</b>	<b>449.0</b>
<b>Net Revenues</b>			
Affiliates	263.6	227.1	190.1
Non-affiliates	249.0	227.1	190.1
<b>Total</b>	<b>512.6</b>	<b>454.2</b>	<b>380.2</b>
<b>Total PPA Revenues</b>	<b>294.0</b>	<b>294.8</b>	<b>294.0</b>

Wholesale revenues that were not covered by PPAs totaled \$349.2 million in 2008, which included \$95.5 million of revenues from affiliated companies. These wholesale sales were made in accordance with the Intercompany Interchange Contract (IIC), as approved by the FERC. These non-PPA wholesale revenues will vary from year to year depending on demand and the availability and cost of generating resources at each company that participates in the centralized operation and dispatch of the Southern Company fleet of generating plants (Southern Pool),

**Fuel and Purchased Power Expenses**

Fuel costs constitute the single largest expense for the Company. Additionally, the Company purchases a portion of its electricity needs from the wholesale market.

Details of the Company's fuel and purchased power expenditures are as follows:

	2008	2007	2006
		(in millions)	
<b>Fuel</b>	<b>\$ 424.8</b>	<b>\$ 387.7</b>	<b>\$ 345.3</b>
<b>Purchased power-non-affiliates</b>	<b>132.2</b>	<b>64.6</b>	<b>53.8</b>
<b>Purchased power-affiliates</b>	<b>195.8</b>	<b>191.9</b>	<b>186.0</b>
<b>Total fuel and purchased power expenses</b>	<b>\$ 752.8</b>	<b>\$ 644.2</b>	<b>\$ 585.1</b>

In 2008, fuel expense increased by \$186.1 million (78.0%) compared to 2007. This increase was driven by a 58.9% increase in generation primarily due to operations at Plant Franklin Unit 3 and a 11.9% increase in the average cost of natural gas.

In 2007, fuel expense increased by \$93.4 million (64.3%) compared to 2006. This increase was driven by a 43.7% increase in generation at Plants Wansley and Dahlberg and a 5.2% increase in the average cost of natural gas.

In 2006, fuel expense decreased by \$63.8 million (30.5%) compared to 2005. This decrease was driven by a 25.4% reduction in the average cost of natural gas. Gas prices in 2006 were lower and had less weather-driven volatility than the previous year. The fuel price decrease was partially offset by volume increases primarily from increased generation at Plants Wansley and Dahlberg.

Demand for natural gas in the United States increased in 2007 and the first half of 2008. However, natural gas supplies have increased in the first half of 2008 as a result of increased production and higher storage levels due to weak industrial demand. Natural gas prices moderated in the second half of 2008 as the result of a recessionary economy. The Company's PPAs generally provide that the purchasers are responsible for substantially all of the cost of fuel. Consequently, any increase or decrease in fuel costs is accompanied by an increase or decrease in related fuel revenues and does not have a significant impact on net income.

Purchased power expense increased \$128.1 million (64.1%) in 2008 when compared to 2007, primarily due to a 107.9% increase in the average cost of purchased power. Purchased power volume in 2008 decreased 21.0% compared to 2007. Purchased power expense increased \$29.3 million (17.1%) in 2007 when compared to 2006, primarily due to increased purchases of lower cost energy resources from the Southern Pool and non-affiliates and contracts with Georgia Electric Membership Corporation and Dalton Utilities. Purchased power expense increased \$10.7 million (6.6%) in 2006 when compared to 2005, due to purchases from the Southern Pool and contracts with PMPA and Dalton Utilities.

**MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)**

**Southern Power Company and Subsidiary Companies 2008 Annual Report**

Purchased power expenses will vary depending on demand and the availability and cost of generating resources available throughout the Southern Company system and other contract resources. Load requirements are submitted to the Southern Pool on an hourly basis and are filled with the lowest cost alternative, whether that is generation owned by the Company, affiliate-owned generation, or external purchases.

**Other Operations and Maintenance Expenses**

In 2008, other operations and maintenance expenses increased \$12.7 million (9.4%) compared to 2007. This increase was due primarily to the timing of plant maintenance activities and additional administrative and general expenses as a result of costs incurred to implement the FERC compliance plan. See FUTURE EARNINGS POTENTIAL — "FERC Matters — Intercompany Interchange Contract" herein and Note 3 to the financial statements under "FERC Matters — Intercompany Interchange Contract" for additional information.

In 2007, other operations and maintenance expenses increased \$39.7 million (41.7%) compared to 2006. This increase was due primarily to a full year of operations at Plant DeSoto and Plant Rowan acquired in June 2006 and September 2006, respectively, and additional administrative and general expenses as a result of costs incurred to implement the FERC compliance plan. See FUTURE EARNINGS POTENTIAL — "FERC Matters — Intercompany Interchange Contract" herein, Note 2 to the financial statements under "DeSoto and Rowan Acquisitions," and Note 3 to the financial statements under "FERC Matters — Intercompany Interchange Contract" for additional information.

In 2006, other operations and maintenance expenses increased \$14.5 million (17.9%) compared to 2005. This increase was primarily the result of the operation of new generating units from acquisitions of Plant Oleander in June 2005, Plant DeSoto in June 2006, and Plant Rowan in September 2006. See Note 2 to the financial statements under "DeSoto and Rowan Acquisitions" and "Oleander Acquisition" for additional information.

**Loss on IGCC Project**

In November 2007, the Company and the Orlando Utilities Commission (OUC) mutually agreed to terminate the construction of the gasifier portion of the IGCC project. The Company has continued construction of the gas-fired combined cycle generating facility, owned by OUC. The Company recorded a loss in the fourth quarter 2007 of approximately \$17.6 million related to the cancellation of the gasifier portion of the IGCC project. This loss consists of the write-off of construction costs of \$14.0 million and an accrual for termination payments of \$3.6 million. All termination payments were completed in 2008. See FUTURE EARNINGS POTENTIAL — "Construction Projects — IGCC" herein and Note 4 to the financial statements under "Integrated Coal Gasification Combined Cycle (IGCC)" for additional information.

**Gain on Sale of Property**

In January 2008, the Company recorded a gain of \$6.0 million on the sale of an undeveloped tract of land.

**Depreciation and Amortization**

In 2008, depreciation and amortization increased \$14.5 million (19.7%) compared to 2007. This increase was primarily due to the completion of Plant Oleander Unit 5 in December 2007 and Plant Franklin Unit 3 in June 2008 and higher depreciation rates implemented in January 2008. See FUTURE EARNINGS POTENTIAL — "Other Matters" herein for additional information regarding the Company's ongoing review of depreciation estimates.

Depreciation and amortization increased \$8.0 million (12.2%) and \$11.7 million (21.6%) in 2007 and 2006, respectively. These increases were primarily the result of additional depreciation related to Plants DeSoto and Rowan acquired in June 2006 and September 2006, respectively, Plant Oleander acquired in June 2005, and higher depreciation rates from a depreciation study adopted in March 2006. See Note 1 to the financial statements under "Depreciation" and Note 2 to the financial statements under "DeSoto and Rowan Acquisitions" and "Oleander Acquisition" for additional information.

**Taxes Other Than Income Taxes**

In 2008, taxes other than income taxes increased \$2.0 million (12.4%) compared to 2007. This increase was primarily due to property taxes related to the completion of Plant Oleander Unit 5 and Plant Franklin Unit 3 in December 2007 and June 2008, respectively.



## Table of Contents

### **MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)** **Southern Power Company and Subsidiary Companies 2008 Annual Report**

The 2007 increase in taxes other than income taxes was not material.

In 2006, taxes other than income taxes increased \$2.3 million (17.4%) compared to 2005. This increase was primarily due to incremental ad valorem taxes on new assets: Plants DeSoto and Rowan acquired in June 2006 and September 2006, respectively, and Plant Oleander acquired in June 2005. See Note 2 to the financial statements under "DeSoto and Rowan Acquisitions" and "Oleander Acquisition" for additional information.

#### ***Other Income (Expense), Net***

Other income (expense), net increased \$4.3 million (131.1%) in 2008. This increase was primarily due to a \$6.4 million fee received in 2008 for participating in an asset auction. The Company was not the successful bidder in the asset auction.

Changes in other income, net in 2007 and 2006 were primarily the result of unrealized gains and losses on derivative energy contracts. See FINANCIAL CONDITION AND LIQUIDITY — "Market Price Risk" herein and Notes 1 and 6 to the financial statements under "Financial Instruments" for additional information.

#### ***Interest Expense, Net of Amounts Capitalized***

In 2008, interest expense increased \$4.0 million (5.1%) compared to 2007. This increase was primarily the result of a decrease in capitalized interest as a result of the completion of Plant Oleander Unit 5 in December 2007 and Plant Franklin Unit 3 in June 2008, partially offset by a decrease in short-term borrowing levels in 2008.

In 2007, interest expense decreased \$1.0 million (1.2%) compared to 2006. This decrease was primarily due to additional capitalized interest of \$10.9 million on active construction projects and reduced interest on commercial paper of \$2.0 million due to lower borrowing levels. This decrease was partially offset by \$11.9 million increase in interest on \$200 million of senior notes that were issued in November 2006.

In 2006, interest expense increased \$0.8 million (1.0%) compared to 2005. This increase was primarily the result of additional debt incurred for acquisitions. This increase was offset by \$5.6 million of interest capitalized on active construction projects. For additional information, see FUTURE EARNINGS POTENTIAL — "Construction Projects" herein, Note 4 to the financial statements under "Integrated Coal Gasification Combined Cycle (IGCC)," and Note 7 to the financial statements under "Expansion Program."

#### ***Income Taxes***

Income taxes increased \$9.3 million (11.2%) in 2008, \$1.7 million (2.1%) in 2007, and \$9.9 million (13.9%) in 2006 primarily due to higher pre-tax earnings from 2006 through 2008 and changes in the production activities deduction.

#### ***Effects of Inflation***

When inflation exceeds projections used in market, term, and cost evaluations performed at contract initiation, the effects of inflation can create an economic loss. In addition, the income tax laws are based on historical costs. Therefore inflation creates an economic loss as the Company is recovering its costs of investments in dollars that could have less purchasing power. While the inflation rate has been relatively low in recent years, it continues to have an adverse effect on the Company due to large investment in utility plant with long economic lives. Conventional accounting for historical costs does not recognize this economic loss or the partially offsetting gain that arises through financing facilities with fixed money obligations such as long-term debt.

### **FUTURE EARNINGS POTENTIAL**

#### ***General***

The results of operations for the past three years are not necessarily indicative of future earnings potential. The level of the Company's future earnings depends on numerous factors that affect the opportunities, challenges, and risks of the Company's competitive wholesale business. These factors include the Company's ability to achieve sales growth while containing costs. Another major factor is federal regulatory policy, which may impact the Company's level of participation in the market. The level of future earnings also depends on numerous factors including regulatory matters (such as those related to affiliate contracts), creditworthiness

**MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)**  
**Southern Power Company and Subsidiary Companies 2008 Annual Report**

of customers, total generating capacity available in the Southeast, the successful remarketing of capacity as current contracts expire, and the Company's ability to execute its acquisition strategy. Recent recessionary conditions may negatively impact capacity revenues. The timing and extent of the economic recovery will impact future earnings.

The Company's system generating capacity increased 659 MW due to the completion of Franklin Unit 3 in June 2008. In general, the Company has constructed or acquired new generating capacity only after entering into long-term capacity contracts for the new facilities which are optimized by limited energy trading activities. See FUTURE EARNINGS POTENTIAL — "Construction Projects" herein for additional information.

**Power Sales Agreements**

The Company's sales are primarily through long-term PPAs. The Company is working to maintain and expand its share of the wholesale markets. Recent oversupply of generating capacity in the market is being reduced and the Company expects that many areas of the market will need capacity beyond 2014.

The Company's PPAs consist of two types of agreements. The first type, referred to as a unit or block sale, is a customer purchase from a dedicated plant unit where all or a portion of the generation from that unit is reserved for that customer. The Company typically has the ability to serve the unit or block sale customer from an alternate resource. The second type, referred to as requirements service, provides that the Company serve the customer's capacity and energy requirements from a combination of the customer's own generating units and from Company resources not dedicated to serve unit or block sales. The Company has rights to purchase power provided by the requirements customers' resources when economically viable.

The Company has entered into the following PPAs over the past 3 years:

	Date	Megawatts	Plant	Contract Term
<b>2008</b>				
North Carolina Municipal Power Agency No. 1 (NCMPA1)	December 2008	180	Cleveland	1/12-12/31
North Carolina Electric Membership Corporation (NCEMC) (a)	November 2008	180	Cleveland	1/12-12/36
CEMC (a)	November 2008	180(b)	Cleveland	1/12-12/36
EnergyUnited	November 2008	104	Purchased (b)	1/12-12/21
The Energy Authority, Inc.	August 2008	151	Rowan	1/11-12/14
North Carolina Electric Membership Corporation (NCEMC) (b)	July 2008	200	Unassigned	1/10-12/34(d)
Florida Municipal Power Agency (FMPA) (f)	July 2008	85	Stanton	10/13-9/23
<b>2007</b>				
Progress Energy Carolina Inc.	December 2007	155	Rowan	1/10-12/10
Progress Energy Carolina Inc.	December 2007	160	Wansley	1/10-5/11
Georgia Power	April 2007	561	Wansley	6/10-5/17
Georgia Power	April 2007	292	Dahlberg	6/10-5/25
Progress Energy Carolina Inc.	February 2007	150	Rowan	1/10-12/19
<b>2006</b>				
Wulf Power	October 2006	292	Dahlberg	6/09-5/14
Wulf Power (b)	September 2006	160	Rowan	9/06-12/10
Wulf Power (g)	September 2006	304	Rowan	9/06-12/10
CEMPA 1 (g)	September 2006	150	Rowan	9/06-12/10
CEMPA 1 (g)	September 2006	150	Rowan	1/11-12/30
EnergyUnited	May 2006	170(b)	Unassigned	9/06-12/10
EnergyUnited	May 2006	335(e)	Unassigned	1/11-12/25

Energy United	March 2006	161	Rowan	1/15-12/25
Constellation Energy Group, Inc. (Constellation) (i)	April 2006	621	Franklin	1/09-12/15
Franklin Electric Cooperative, Inc.	February 2006	168	Oleander	1/10-12/15
MPA	February 2006	162	Oleander	12/07-12/27

**MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)**  
**Southern Power Company and Subsidiary Companies 2008 Annual Report**

- i) Subject to approval by the Rural Utilities Service.
- j) Power purchases under this agreement will increase over the term of the agreement. 45 MWs will be sold from 2012 through 2016, 90 MWs will be sold from 2017 through 2018, and 180 MWs will be sold from 2019 through 2036.
- k) Power to serve this agreement will be purchased under a third party agreement for resale to EnergyUnited. The purchases will be resold at cost.
- l) These agreements are extensions of current agreements with ten Georgia EMCs. Eight agreements were extended from 2010 through 2031 and two agreements were extended from 2013 through 2034.
- m) Represents average annual capacity purchases.
- n) This agreement is an extension of the current agreement with FMPA for Plant Stanton.
- o) Assumed contract through the Plant Rowan acquisition in 2006.
- p) PPA was amended in 2008 reducing MWs purchased from 205 to 161.
- q) Contract was assumed by Constellation from Progress Ventures, Inc. in 2007.

The Company has PPAs with some of Southern Company's traditional operating companies and with other investor owned utilities, dependent power producers, municipalities, and electric cooperatives. Although some of the Company's PPAs are with the traditional operating companies, the Company's generating facilities are not in the traditional operating companies' regulated rate bases, and the Company not able to seek recovery from the traditional operating companies' ratepayers for construction, repair, environmental, or maintenance costs. The Company expects that the capacity payments in the PPAs will produce sufficient cash flow to cover costs, pay debt service, and provide an equity return. However, the Company's overall profit will depend on numerous factors, including efficient operation of its generating facilities.

As a general matter, existing PPAs provide that the purchasers are responsible for either procuring the fuel or reimbursing the Company for the cost of fuel relating to the energy delivered under such PPAs. To the extent a particular generating facility does not meet the operational requirements contemplated in the PPAs, the Company may be responsible for excess fuel costs. With respect to fuel transportation risk, most of the Company's PPAs provide that the counterparties are responsible for transporting the fuel to the particular generating facility.

Fixed and variable operation and maintenance costs will be recovered through capacity charges based on dollars-per-kilowatt year or energy charges based on dollars-per-MW hour. In general, the Company has long-term service contracts with General Electric and Siemens AG to reduce its exposure to certain operation and maintenance costs relating to such vendors' applicable equipment. See Note 7 to the financial statements under "Long-Term Service Agreements" for additional information.

Many of the Company's PPAs have provisions that require the posting of collateral or an acceptable substitute guarantee in the event that Standard & Poor's or Moody's downgrades the credit ratings of the counterparty to an unacceptable credit rating or the counterparty is not rated or fails to maintain a minimum coverage ratio. The PPAs are expected to provide the Company with a stable source of revenue during their respective terms.

The Company has entered into long-term power sales agreements for an average of 83% of its available capacity for the next 10 years as follows:

	2009- 2010	2011- 2012	2013- 2014	2015- 2016	2017- 2018
Average available capacity (a)	7,709	8,015	8,311	8,271	8,231
Average contracted capacity	7,171	7,064	7,348	6,617	5,325
Percent contracted	93%	88%	88%	80%	66%

- j). Includes confirmed third party power purchases for 2009 through 2018.

**MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)**  
**Southern Power Company and Subsidiary Companies 2008 Annual Report**

**Environmental Matters**

The Company's operations are subject to extensive regulation by state and federal environmental agencies under a variety of statutes and regulations governing environmental media, including air, water, and land resources. Applicable statutes include the Clean Air Act; the Clean Water Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Resource Conservation and Recovery Act; the Toxic Substances Control Act; the Emergency Planning & Community Right-to-Know Act; the Endangered Species Act; and related federal and state regulations. Compliance with possible additional federal or state legislation or regulations related to global climate change, air quality, or other environmental and health concerns can also significantly affect the Company.

New environmental legislation or regulations, such as requirements related to greenhouse gases, or changes to existing statutes or regulations, could affect many areas of the Company's operations. While the Company's PPAs generally contain provisions that permit charging the counterparty with some of the new costs incurred as a result of changes in environmental laws and regulations, the full impact of any such regulatory or legislative changes cannot be determined at this time.

Because the Company's units are newer gas-fired generating facilities, costs associated with environmental compliance for these facilities have been less significant than for similarly situated coal-fired generating facilities or older gas-fired generating facilities. Environmental, natural resource, and land use concerns, including the applicability of air quality limitations, the availability of water withdrawal rights, uncertainties regarding aesthetic impacts such as increased light or noise, and concerns about potential adverse health impacts, can, however, increase the cost of siting and operating any type of future electric generating facility. The impact of such statutes and regulations on the Company cannot be determined at this time.

Litigation over environmental issues and claims of various types, including property damage, personal injury, common law nuisance, and citizen enforcement of environmental requirements such as air and water quality standards, has increased generally throughout the United States. In particular, personal injury claims for damages caused by alleged exposure to hazardous materials have become more frequent. The ultimate outcome of such potential litigation against the Company cannot be determined at this time.

**Global Climate Issues**

Federal legislative proposals that would impose mandatory requirements related to greenhouse gas emissions and renewable energy standards continue to be strongly considered in Congress, and the reduction of greenhouse gas emissions has been identified as a high priority by the current Administration. The ultimate outcome of these proposals cannot be determined at this time; however, mandatory restrictions on the Company's greenhouse gas emissions could result in significant additional compliance costs that could affect future unit retirement and placement decisions and results of operations, cash flows, and financial condition.

In April 2007, the U.S. Supreme Court ruled that the Environmental Protection Agency (EPA) has authority under the Clean Air Act to regulate greenhouse gas emissions from new motor vehicles. The EPA is currently developing its response to this decision. Regulatory decisions that will follow from this response may have implications for both new and existing stationary sources, such as power plants. The ultimate outcome of these rulemaking activities cannot be determined at this time; however, as with the current legislative proposals, mandatory restrictions on the Company's greenhouse gas emissions could result in significant additional compliance costs that could affect future unit retirement and placement decisions and results of operations, cash flows, and financial condition.

In addition, some states are considering or have undertaken actions to regulate and reduce greenhouse gas emissions. For example, on June 25, 2008, Florida's Governor signed comprehensive energy-related legislation that includes authorization for the Florida Department of Environmental Protection to adopt rules for a cap-and-trade regulatory program to address greenhouse gas emissions from electric utilities, conditioned upon their ratification by the legislature no sooner than the 2010 legislative session. This legislation also authorizes the Florida Public Service Commission to adopt a renewable portfolio standard for public utilities, subject to legislative ratification. The impact of this and any similar legislation on the Company will depend on the future development, adoption, legislative ratification, implementation, and potential legal challenges to rules governing greenhouse gas emissions and mandates regarding the use of renewable energy, and the ultimate outcome cannot be determined at this time.

International climate change negotiations under the United Nations Framework Convention on Climate Change also continue. Current efforts focus on a potential successor to the Kyoto Protocol for the post 2012 timeframe, with a conclusion to this round of negotiations targeted for the end of 2009. The outcome and impact of the international negotiations cannot be determined at this time.

The Company continues to evaluate its future energy and emission profiles and is participating in voluntary programs to reduce greenhouse gas emissions and to help develop and advance technology to reduce emissions.

**MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)**  
**Southern Power Company and Subsidiary Companies 2008 Annual Report**

***Carbon Dioxide Litigation***

In February 26, 2008, the Native Village of Kivalina and the City of Kivalina filed a suit in the U.S. District Court for the Northern District of California against several electric utilities (including Southern Company), several oil companies, and a coal company. The plaintiffs are the governing bodies of an Inupiat village in Alaska. The plaintiffs contend that the village is being destroyed by erosion allegedly caused by global warming that the plaintiffs attribute to emissions of greenhouse gases by the defendants. The plaintiffs assert claims for public and private nuisance and contend that the defendants have acted in concert and are therefore jointly and severally liable for the plaintiffs' damages. The suit seeks damages for lost property values and for the cost of relocating the village, which is alleged to be \$95 million to \$400 million. On June 30, 2008, all defendants filed motions to dismiss this case. Southern Company believes that these claims are without merit and notes that the complaint cites no statutory or regulatory basis for the claims. The ultimate outcome of this matter cannot be determined at this time.

**FERC Matters**

***Market-Based Rate Authority***

The Company has authorization from the FERC to sell power to non-affiliates, including short-term opportunity sales, at market-based prices. Specific FERC approval must be obtained with respect to a market-based contract with an affiliate.

In December 2004, the FERC initiated a proceeding to assess Southern Company's generation dominance within its retail service territory. The ability to charge market-based rates in other markets is not an issue in the proceeding. Any new market-based rate sales by the Company in Southern Company's retail service territory entered into during a 15-month refund period that ended in May 2006 could be subject to refund to cost-based rate level.

In November 2007, the presiding administrative law judge issued an initial decision regarding the methodology to be used in the generation dominance tests. The proceedings are ongoing. The ultimate outcome of this generation dominance proceeding cannot now be determined, but an adverse decision by the FERC in a final order could require the Company to charge cost-based rates for certain wholesale sales in the Southern Company retail service territory, which may be lower than negotiated market-based rates, and could also result in total refunds of up to \$0.7 million, plus interest. The Company believes that there is no meritorious basis for an adverse decision in this proceeding and is vigorously defending itself in this matter.

In June 2007, the FERC issued its final rule in Order No. 697 regarding market-based rate authority. The FERC generally retained its current market-based rate standards. Responding to a number of requests for rehearing, the FERC issued Order No. 697-A on April 21, 2008 and Order No. 697-B on December 12, 2008. These orders largely affirmed its prior revision and codification of the regulations governing market-based rates for public utilities. In accordance with the orders, Southern Company submitted to the FERC an updated market power analysis on September 2, 2008 related to its continued market-based rate authority. The ultimate outcome of this matter cannot now be determined.

In October 17, 2008, Southern Company filed with the FERC a revised market-based rate (MBR) tariff and a new cost-based rate (CBR) tariff. The revised MBR tariff provides for a "must offer" energy auction whereby Southern Company offers all of its available energy for sale in a day-ahead auction and an hour-ahead auction with reserve prices not to exceed the CBR tariff price, after considering Southern Company's active load requirements, reliability obligations, and sales commitments to third parties. All sales under the energy auction would be at market clearing prices established under the auction rules. The new CBR tariff provides for a cost-based price for wholesale sales of less than a year. In December 18, 2008, the FERC issued an order conditionally accepting the MBR tariff subject to certain revisions to the auction proposal. In January 21, 2009, Southern Company made a compliance filing that accepted all the conditions of the MBR tariff order. When this order becomes final, Southern Company will have 30 days to implement the wholesale auction. On December 31, 2008, the FERC issued an order conditionally accepting the CBR tariff subject to providing additional information concerning one aspect of the tariff. On January 30, 2009, Southern Company filed a response addressing the FERC inquiry to the CBR tariff order. Implementation of the energy auction in accordance with the MBR tariff order is expected to adequately mitigate going forward any presumption of market power that Southern Company may have in the Southern Company retail service territory. The timing of when the FERC may issue the final orders on the MBR and CBR tariffs and the ultimate outcome of these matters cannot be determined at this time.

**MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)**  
**Southern Power Company and Subsidiary Companies 2008 Annual Report**

***Intercompany Interchange Contract***

The majority of the Company's generation fleet is operated under the IIC, as approved by the FERC. In May 2005, the FERC initiated a new proceeding to examine (1) the provisions of the IIC among the traditional operating companies, the Company, and Southern Company Services, Inc., as agent, under the terms of which the Southern Pool is operated, (2) whether any parties to the IIC have violated the FERC's standards of conduct applicable to utility companies that are transmission providers, and (3) whether Southern Company's code of conduct defining the company as a "system company" rather than a "marketing affiliate" is just and reasonable. In connection with the formation of the Company, the FERC authorized the Company's inclusion in the IIC in 2000. The FERC also previously approved Southern Company's code of conduct.

In October 2006, the FERC issued an order accepting a settlement resolving the proceeding subject to Southern Company's agreement to accept certain modifications to the settlement's terms and Southern Company notified the FERC that it accepted the modifications. The modifications largely involve functional separation and information restrictions related to marketing activities conducted on behalf of Southern Power. In November 2006, Southern Company filed with the FERC a compliance plan in connection with the order. In April 2007, the FERC approved, with certain modifications, the plan submitted by Southern Company. In November 2007, Southern Company notified the FERC that the plan had been implemented. On December 12, 2008, the FERC division of audits issued for public comment its final audit report pertaining to compliance implementation and related matters. No comments challenging the audit report's findings were submitted. A decision is now pending from the FERC. The annual cost of implementing the order is approximately \$7.0 million. The ultimate outcome of this matter cannot be determined at this time.

***Income Tax Matters***

***Legislation***

In February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (ARRA). Major tax incentives in the ARRA include an extension of bonus depreciation and multiple renewable energy incentives. These incentives could have a significant impact on the Company's future cash flow and net income. Additionally, the ARRA includes programs for renewable energy, transmission and smart grid enhancement, fossil energy and research, and energy efficiency and conservation. The ultimate impact cannot be determined at this time.

***Internal Revenue Code Section 199 Domestic Production Deduction***

The American Jobs Creation Act of 2004 created a tax deduction for a portion of income attributable to U.S. production activities as defined in the Internal Revenue Code of 1986, as amended, Section 199 (production activities deduction). The deduction is equal to a stated percentage of qualified production activities net income. The percentage is phased in over the years 2005 through 2010 with a 3% rate applicable to the years 2005 and 2006, a 6% rate applicable for years 2007 through 2009, and a 9% rate thereafter. The Internal Revenue Service (IRS) has not clearly defined a methodology for calculating this deduction. However, Southern Company has agreed with the IRS on a calculation methodology and signed a closing agreement on December 11, 2008. Therefore, the Company reversed the unrecognized tax benefit and adjusted the deduction to conform to the agreement. The net impact of the reversal of the unrecognized tax benefits combined with the application of the new methodology had no material effect on the Company's financial statements. See Note 5 to the financial statements under "Effective Tax Rate" for additional information.

***Construction Projects***

***Cleveland County Units 1-4***

In December 5, 2008, the Company announced that it will build an electric generating plant in Cleveland County, North Carolina. The plant will consist of four combustion turbine natural gas generating units with a total generating capacity of 720 MW. The units are expected to go to commercial operation in 2012. Costs incurred through December 31, 2008 were \$5.2 million. The total estimated construction cost is expected to be between \$350 million and \$400 million, which is included in the capital program estimates described under FINANCIAL CONDITION AND LIQUIDITY — "Capital Requirements and Contractual Obligations" herein.

The Company has also entered into PPAs with NCEMC and NCMPA1 for a portion of the generating capacity from the plant that will begin in 2012 and expire in 2036 and 2031, respectively. NCEMC will purchase 180 MW of capacity that will be supported by one unit at the plant and will purchase capacity from a second unit at the plant that will increase to 180 MW over a seven year phase-in period. NCMPA1 will purchase 60 MW from a third unit at the plant. The NCEMC PPAs are subject to approval by the Rural Utilities Service. The final outcome of this matter cannot now be determined.

## Table of Contents

### **MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)** **Southern Power Company and Subsidiary Companies 2008 Annual Report**

#### ***Plant Franklin Unit 3***

The Company completed construction of Plant Franklin Unit 3 in June 2008. Total costs incurred were \$309.9 million. The unit is a natural gas-fueled combined cycle located in Smiths, Alabama with a nameplate capacity of 659 MW. The unit will be used to provide annual capacity or a PPA with Constellation from 2009 through 2015.

#### ***Plant Oleander Unit 5***

The Company completed construction of Plant Oleander Unit 5 in December 2007. Total costs incurred were \$58.0 million. This unit is a combustion turbine with a nameplate capacity of 163 MW located in Brevard County, Florida. This unit is contracted to provide annual capacity for a PPA with FMFA from 2007 through 2027.

#### ***IGCC***

In December 2005, the Company and OUC executed definitive agreements for development of a 285-MW IGCC project in Orlando, Florida. The definitive agreements provided that the Company would own at least 65% of the gasifier portion of the IGCC project. OUC would own the remainder of the gasifier portion and 100% of the combined cycle portion of the IGCC project. The Company signed cooperative agreements with the U.S. Department of Energy (DOE) that provided up to \$293.75 million in grant funding for the gasification portion of this project. The IGCC project was expected to begin commercial operation in 2010. Due to uncertainty surrounding potential state regulations relating to greenhouse gas emissions, the Company and OUC mutually agreed to terminate the construction of the gasifier portion of the IGCC project in November 2007. The Company has continued construction of the gas-fired combined cycle generating facility for OUC under a fixed-price, long-term contract for engineering, procurement, and construction services. The Company expects the construction to be completed substantially at the contractual fixed price and no profit or loss is anticipated at this time. The Company recorded a loss in the fourth quarter 2007 of approximately \$17.6 million related to cancellation of the gasifier portion of the IGCC project. This amount is net of reimbursements from OUC and the DOE. This loss consists of the write-off of construction costs of \$14.0 million and an accrual for termination costs of 3.6 million. All termination costs were paid in 2008. As part of the termination agreement with OUC, the Company sold a tract of land in Orange County, Florida to OUC. The Company recorded a gain of approximately \$6 million on this sale in the first quarter 2008.

#### ***Other Matters***

The Company completed depreciation studies in 2006 and 2008. The composite depreciation rates for its property, plant, and equipment were updated in these studies. These changes in estimates arise from changes in useful life assumptions for certain components of plant in service. These changes increased depreciation expense prospectively beginning March 1, 2006 and January 1, 2008 and reduced net income. The net income impacts of these changes were \$3.8 million and \$2.8 million, respectively. See Note 1 to the financial statements under "Depreciation" for additional information. The Company reviews its estimated useful lives and salvage values on an ongoing basis. The results of these reviews could have a material impact on net income in the near term. See ACCOUNTING POLICIES — "Application of Critical Accounting Policies and Estimates" herein for additional information.

From time to time, the Company is involved in various matters being litigated and regulatory matters that could affect future earnings. In addition, the Company is subject to certain claims and legal actions arising in the ordinary course of business. The Company's business activities are subject to extensive governmental regulation related to public health and the environment. Litigation over environmental issues and claims of various types, including property damage, personal injury, common law nuisance, and citizen enforcement of environmental requirements such as air and water quality standards, has increased generally throughout the United States. In particular, personal injury claims or damages caused by alleged exposure to hazardous materials have become more frequent. The ultimate outcome of such pending or potential litigation against the Company cannot be predicted at this time; however, for current proceedings not specifically reported herein, management does not anticipate that the liabilities, if any arising from such current proceedings would have a material adverse effect on the Company's financial statements. See Note 3 to the financial statements for information regarding material issues.

### **ACCOUNTING POLICIES**

#### **Application of Critical Accounting Policies and Estimates**

The Company prepares its consolidated financial statements in accordance with accounting principles generally accepted in the United States. Significant accounting policies are described in Note 1 to the financial statements. In the application of these policies, certain



## Table of Contents

### **MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)** **Southern Power Company and Subsidiary Companies 2008 Annual Report**

Estimates are made that may have a material impact on the Company's results of operations and related disclosures. Different assumptions and measurements could produce estimates that are significantly different from those recorded in the financial statements. Senior management has reviewed and discussed the critical accounting policies and estimates described below with the Audit Committee of Southern Company's Board of Directors.

#### ***Revenue Recognition***

The Company's revenue recognition depends on appropriate classification and documentation of transactions in accordance with Financial Accounting Standards Board (FASB) Statement No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended and interpreted (SFAS No. 133). In general, the Company's power sale transactions can be classified in one of four categories: non-derivatives, normal sales, cash flow hedges, and mark to market. For more information on derivative transactions, see FINANCIAL CONDITION AND LIQUIDITY — "Market Price Risk" herein and Notes 1 and 6 to the financial statements under "Financial Instruments." The Company's revenues are dependent upon significant judgments used to determine the appropriate transaction classification, which must be documented upon the inception of each contract. Factors that must be considered in making these determinations include:

- Assessing whether a sales contract meets the definition of a lease;
- Assessing whether a sales contract meets the definition of a derivative;
- Assessing whether a sales contract meets the definition of a capacity contract;
- Assessing the probability at inception and throughout the term of the individual contract that the contract will result in physical delivery;
- Ensuring that the contract quantities do not exceed available generating capacity (including purchased capacity);
- Identifying the hedging instrument, the hedged transaction, and the nature of the risk being hedged; and
- Assessing hedge effectiveness at inception and throughout the contract term.

#### ***Normal Sale and Non-Derivative Transactions***

The Company has entered into capacity contracts that provide for the sale of electricity and that involve physical delivery in quantities within the Company's available generating capacity. These contracts either do not meet the definition of a derivative or are designated as normal sales, thus exempting them from fair value accounting under SFAS No. 133. As a result, such transactions are accounted for as executory contracts; additionally, the related revenue is recognized in accordance with Emerging Issues Task Force (EITF) No. 91-6, "Revenue Recognition of Long-Term Power Sales Contracts" on an accrual basis in amounts equal to the lesser of the levelized amount or the amount billable under the contract, over the respective contract periods. Revenues are recorded on a gross or net basis in accordance with EITF No. 99-19, "Reporting Revenue Gross as a Principal versus Net as an Agent." Revenues from transactions that do not meet the definition of a derivative are also recorded in this manner. Contracts recorded on the accrual basis represented the majority of the Company's operating revenues for the year ended December 31, 2008.

#### ***Cash Flow Hedge Transactions***

The Company designates other derivative contracts for the sale of electricity as cash flow hedges of anticipated sale transactions. These contracts are marked to market through other comprehensive income over the life of the contract. Realized gains and losses are then recognized as revenues as incurred.

#### ***Mark to Market Transactions***

Contracts for sales of electricity that are not normal sales and are not designated as cash flow hedges are marked to market and recorded directly through net income. Net unrealized gains on such contracts were not material for the years ended December 31, 2008, 2007, or 2006.

**MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)**  
**Southern Power Company and Subsidiary Companies 2008 Annual Report**

*Percentage of Completion*

The Company is currently engaged in a long-term contract for engineering, procurement, and construction services to build a combined cycle unit for OUC. Construction activities commenced in 2006 and are expected to be complete by the end of 2009. Revenues and costs are recognized using the percentage-of-completion method. The Company utilizes the cost-to-cost approach as this method is less subjective than relying on assessments of physical progress. The percentage of completion represents the percentage of the total costs incurred to the estimated total cost of the contract. Revenues and costs are recognized by applying this percentage to the total revenues and estimated costs of the contract.

*Asset Impairments*

The Company's investments in long-lived assets are primarily generation assets, whether in service or under construction. The Company values the carrying value of these assets under FASB Statement No. 144, "Accounting for the Impairment or Disposal of Long-lived Assets," whenever indicators of potential impairment exist. Examples of impairment indicators could include significant changes in construction schedules, current period losses combined with a history of losses or a projection of continuing losses, a significant decrease in market prices, and the inability to remarket generating capacity for an extended period. If an indicator exists, the asset is tested for recoverability by comparing the asset carrying value to the sum of the undiscounted expected future cash flows directly attributable to the asset. A high degree of judgment is required in developing estimates related to these evaluations, which are based on projections of various factors, including the following:

- Future demand for electricity based on projections of economic growth and estimates of available generating capacity;
- Future power and natural gas prices, which have been quite volatile in recent years; and
- Future operating costs.

*Acquisition Accounting*

The Company has been engaged in a strategy of acquiring assets. The Company has accounted for these acquisitions under the purchase method in accordance with FASB Statement No. 141, "Business Combinations." Accordingly, the Company has included these operations in the consolidated financial statements from the respective date of acquisition. The purchase price of each acquisition was allocated to the identifiable assets and liabilities based on a valuation prepared by a third party. The Company adopted FASB Statement No. 141 (revised 2007), "Business Combinations" (SFAS No. 141R) effective January 1, 2009. Any costs incurred by the Company in assessing potential acquisitions that will close after December 31, 2008 have been expensed as incurred.

*Contingent Obligations*

The Company is subject to a number of federal and state laws and regulations, as well as other factors and conditions that potentially subject it to environmental, litigation, income tax, and other risks. See FUTURE EARNINGS POTENTIAL herein and Note 3 to the financial statements for more information regarding certain of these contingencies. The Company periodically evaluates its exposure to such risks and, in accordance with generally accepted accounting principles, records reserves for those matters where a non-tax-related loss is considered probable and reasonably estimable and records a tax asset or liability if it is more likely than not that a tax position will be sustained. The adequacy of reserves can be significantly affected by external events or conditions that can be unpredictable; thus, the ultimate outcome of such matters could materially affect the Company's financial statements. These events or conditions include the following:

- Changes in existing state or federal regulation by governmental authorities having jurisdiction over air quality, water quality, control of toxic substances, hazardous and solid wastes, and other environmental matters.
- Changes in existing income tax regulations or changes in IRS or state revenue department interpretations of existing regulations.
- Identification of sites that require environmental remediation or the filing of other complaints in which the Company may be asserted to be a potentially responsible party.
- Identification and evaluation of other potential lawsuits or complaints in which the Company may be named as a defendant.
- Resolution or progression of new or existing matters through the legislative process, the court systems, the IRS, the FERC, or the EPA.

**MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)**  
**Southern Power Company and Subsidiary Companies 2008 Annual Report**

**Depreciation**

Depreciation of the original cost of assets is computed under the straight-line method and applies a composite depreciation rate based on the assets' estimated useful lives determined by management. The primary assets in property, plant, and equipment are power plants, all of which have an estimated composite life ranging from 29 to 37 years. These lives reflect a weighted average of the significant components (retirement units) that make up the plants. The Company reviews its estimated useful lives and salvage values on an ongoing basis. The results of these reviews could result in changes which could have a material impact on net income in the near term. See Note 1 to the financial statements under "Depreciation" for a discussion of changes in depreciation assumptions made by the Company effective January 1, 2008.

When property subject to composite depreciation is retired or otherwise disposed of in the normal course of business, its cost is charged to accumulated depreciation. For other property dispositions, the applicable cost and accumulated depreciation is removed from the accounts and gain or loss is recognized.

**Accounting Standards**

**Business Combinations**

December 2007, the FASB issued SFAS No. 141R. The Company adopted SFAS No. 141R on January 1, 2009. The adoption of SFAS No. 141R could have an impact on the accounting for any business combinations completed by the Company after January 1, 2009. Any costs incurred by the Company in assessing potential acquisitions that will close after December 31, 2008 have been expensed as incurred.

December 2007, the FASB issued FASB Statement No. 160, "Non-controlling Interests in Consolidated Financial Statements" (SFAS No. 160). SFAS No. 160 amends Accounting Research Bulletin No. 51, "Consolidated Financial Statements" to establish accounting and reporting standards for the non-controlling (minority) interest in a subsidiary and for the deconsolidation of a subsidiary. It clarifies that a non-controlling interest in a subsidiary should be reported as equity in the consolidated financial statements and establishes a single method of accounting for changes in a parent's ownership interest in a subsidiary that do not result in deconsolidation. The Company adopted SFAS No. 160 on January 1, 2009 with no material impact to the financial statements.

**FINANCIAL CONDITION AND LIQUIDITY**

**Overview**

The Company's financial condition remained stable at December 31, 2008. Throughout the recent turmoil in the financial markets, the Company has maintained cash balances to cover the majority of its capital needs and has had limited need to issue commercial paper or draw committed credit arrangements. There was no commercial paper outstanding as of December 31, 2008. Subsequent to December 31, 2008, the Company issued a small amount of overnight commercial paper. Southern Power intends to continue to monitor its access to short-term and long-term capital markets as well as its bank credit arrangements as needed to meet its future capital and liquidity needs. No changes in bank credit arrangements were experienced during 2008 although market rates for committed credit have increased and the Company may be subject to higher costs as its existing facilities are replaced or renewed. The Company experienced no material counterparty credit losses as a result of the turmoil in the financial markets. The ultimate impact on future financing costs as a result of the financial turmoil cannot be determined at this time. See "Sources of Capital" herein for additional information on lines of credit.

Net cash provided from operating activities totaled \$264.3 million in 2008, decreasing 19.4% from 2007. This decrease is primarily due to cash outflows for engineering, procurement, and construction services to build a combined cycle unit for OUC. The OUC contract is not expected to have any positive or negative cash impacts to the Company over the term of the contract as the Company is not anticipating a profit or loss from this transaction at this time. Net cash used for investing activities totaled \$85.8 million in 2008, decreasing 53.4% from 2007. This decrease was primarily due to the completion of Plant Oleander Unit 5 in 2007 and the completion of Plant Franklin Unit 3 in 2008. Gross property additions to utility plant of \$50.0 million in 2008 were primarily related to the completion of Plant Franklin Unit 3. Net cash used for financing activities was \$140.6 million in 2008, decreasing 14.9% from 2007. This decrease was primarily due to reduced levels of short-term debt in 2008.

## Table of Contents

### **MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)**

#### **Southern Power Company and Subsidiary Companies 2008 Annual Report**

Net cash provided from operating activities totaled \$315.4 million in 2007, increasing 29.8% from 2006. This increase was primarily due to the increase in sales due to favorable weather and cash received under billings for the engineering, procurement, and construction services to build combined cycle unit for OUC. Net cash used for investing activities totaled \$183.9 million in 2007, decreasing 61% from 2006. This decrease was primarily due to the acquisition of Plants DeSoto and Rowan in June 2006 and September 2006, respectively. Gross property additions to utility plant of \$139.2 million in 2007 were primarily related to the on-going construction activity at Plant Franklin Unit 3 and the completion of construction at Plant Oleander Unit 5. Net cash used for financing activities was \$161.5 million in 2007 compared to \$233.4 million provided to the Company in 2006. This change was primarily due to the cash proceeds of \$200 million from the issuance of 30-year senior notes in 2006 and borrowings and equity contributions to finance the acquisitions of Plants DeSoto and Rowan.

Net cash provided from operating activities totaled \$243.0 million in 2006, increasing 20.6% from 2005. This increase was primarily due to the increase in sales due to PPAs started or acquired during the period and a reduction of energy revenues due to lower natural gas prices resulting in reduced working capital levels. Net cash used for investing activities totaled \$474.1 million in 2006, increasing 96.6% from 2005. This increase was due primarily to the acquisition of Plants DeSoto and Rowan in June 2006 and September 2006, respectively. Net cash provided by financing activities in 2006 totaled \$233.4 million, increasing 453.1% from 2005. This increase was primarily due to the cash proceeds of \$200 million from the issuance of 30-year senior notes in 2006 and borrowings and equity contributions to finance the acquisitions of Plants DeSoto and Rowan.

Significant asset changes in the balance sheet during 2008 include increases in accounts receivable related to higher energy revenues due to an increase in natural gas prices, increases in long-term service agreements prepayments due to the timing of outage activities, and an increase in cash due to a reduction of investing activities of the Company in 2008 due to the completion of construction projects at Plant Oleander Unit 5 in December 2007 and Plant Franklin Unit 3 in June 2008.

Significant asset changes in the balance sheet during 2007 include lower cash balances as available amounts were used to reduce short-term debt and an increase in assets from risk management activities primarily due to mark to market changes on energy derivative contracts.

Significant liability and stockholder's equity changes in the balance sheet during 2008 include the payment of short-term debt obligations, increases in affiliate payables due to increases in natural gas and purchased power prices, a reduction of other current liabilities due to payment of IGCC termination costs, and a decrease in the net billings in excess of cost on the OUC construction contract due to on-going construction activities. In 2008, the Company also paid \$94.5 million in dividends to Southern Company.

Significant liability and stockholder's equity changes in the balance sheet during 2007 include a reduction of short-term debt, an increase in billings received in excess of costs on the OUC construction contract, and payment of \$89.8 million in dividends to Southern Company.

#### **Sources of Capital**

The Company may use operating cash flows, external funds, or equity capital or loans from Southern Company to finance any new projects, acquisitions, and ongoing capital requirements. The Company expects to generate external funds from the issuance of unsecured senior debt and commercial paper or utilization of credit arrangements from banks. However, the amount, type, and timing of any financings, if needed, will depend upon regulatory approval, prevailing market conditions, and other factors.

The Company's current liabilities frequently exceed current assets due to the use of short-term indebtedness as a funding source, as well as cash needs which can fluctuate significantly due to the seasonality of the business. To meet liquidity and capital resource requirements, at December 31, 2008, the Company had \$400 million of committed credit arrangements with banks that expire in 2012. There were no borrowings under this facility outstanding at December 31, 2008. Proceeds from these credit arrangements may be used for working capital and general corporate purposes as well as liquidity support for the Company's commercial paper program. See Note 6 to the financial statements under "Bank Credit Arrangements" for additional information.

The Company's commercial paper program is used to finance acquisition and construction costs related to electric generating facilities and for general corporate purposes. At December 31, 2008, there was no commercial paper outstanding. See Note 6 to the financial statements under "Bank Credit Arrangements" for additional information.

Management believes that the need for working capital can be adequately met by utilizing cash balances, commercial paper programs, and lines of credit.

**MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)**  
**Southern Power Company and Subsidiary Companies 2008 Annual Report**

**Financing Activities**

During 2008 and 2007, the Company did not issue any new long-term securities.

The issuance of all securities by the Company is generally subject to regulatory approval by the FERC. Additionally, with respect to the public offering of securities, the Company files registration statements with the Securities and Exchange Commission (SEC) under the Securities Act of 1933, as amended (1933 Act). The amounts of securities authorized by the FERC, as well as the amounts registered under the 1933 Act, are continuously monitored and appropriate filings are made to ensure flexibility in the capital markets.

**Credit Rating Risk**

The Company does not have any credit arrangements that would require material changes in payment schedules or terminations as a result of a credit rating downgrade. There are certain contracts that could require collateral, but not accelerated payment, in the event of a credit rating change to BBB and Baa2, or BBB- and/or Baa3 or below. These contracts are for physical electricity purchases and sales, fuel purchases, fuel transportation and storage, and energy price risk management. At December 31, 2008, the maximum potential collateral requirements under these contracts at a BBB and Baa2 rating were approximately \$9 million and at a BBB- and/or Baa3 rating were approximately \$334 million. At December 31, 2008, the maximum potential collateral requirements under these contracts at a rating below BBB- and/or Baa3 were approximately \$723 million. Included in these amounts are certain agreements that could require collateral in the event that one or more Power Pool participants has a credit rating change to below investment grade. Generally, collateral may be provided by a Southern Company guaranty, letter of credit, or cash. Additionally, any credit rating downgrade could impact the Company's ability to access capital markets, particularly the short-term debt market.

In addition, through the acquisition of Plant Rowan, the Company assumed a PPA with Duke Energy that could require collateral, but not accelerated payment, in the event of a downgrade to the Company's credit rating to below BBB- or Baa3. The amount of collateral required could depend upon actual losses, if any, resulting from a credit downgrade.

**Market Price Risk**

The Company is exposed to market risks, including changes in interest rates, certain energy-related commodity prices, and, occasionally, currency exchange rates. To manage the volatility attributable to these exposures, the Company takes advantage of natural offsets and enters into various derivative transactions for the remaining exposures pursuant to the Company's policies in areas such as counterparty exposure and hedging practices. Company policy is that derivatives are to be used primarily for hedging purposes. Derivative positions are monitored using techniques that include market valuation and sensitivity analysis.

At December 31, 2008, the Company had no variable long-term debt outstanding. Therefore, there would be no effect on annualized interest expense related to long-term debt if the Company sustained a 100 basis point change in interest rates. Since a significant portion of outstanding indebtedness bears interest at fixed rates, the Company is not aware of any facts or circumstances that would significantly affect such exposures in the near term. However, the impact on future financing costs cannot be determined at this time.

Because energy from the Company's facilities is primarily sold under long-term PPAs with tolling agreements and provisions shifting substantially all of the responsibility for fuel cost to the counterparties, the Company's exposure to market volatility in commodity fuel prices and prices of electricity is limited. However, the Company has been and may continue to be exposed to market volatility in energy-related commodity prices as a result of sales of uncontracted generating capacity.

The changes in fair value of energy-related derivative contracts were as follows at December 31:

	2008 Changes	2007 Changes
	Fair Value (in millions)	
Contracts outstanding at the beginning of the period, assets (liabilities), net	\$ 3.4	\$ 1.9
Intraccts realized or settled	1.4	(1.9)
Intraccts period changes (a)	(1.4)	3.4
Intraccts outstanding at the end of the period, assets (liabilities), net	\$ 3.4	\$ 3.4

(a) Current period changes also include the changes in fair value of new contracts entered into during the period, if any.

**MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)**  
**Southern Power Company and Subsidiary Companies 2008 Annual Report**

Although the change in the fair value positions of the energy-related derivative contracts for the year ended December 31, 2008 was immaterial, the underlying changes are attributable to both the volume and prices of power and natural gas as follows:

	December 31, 2008	December 31, 2007
<b>Power (net sold)</b>		
Megawatt hours (MWH) (in millions)	0.3	1.7
Weighted average contract cost per MWH above (below) market prices (in dollars)	\$ (9.29)	\$ 1.76
<b>Natural gas (net purchase)</b>		
Million cubic feet (MMcf)	3.8	3.8
Weighted average contract cost per British thermal unit (Btu) above (below) market prices (in dollars)	\$ (2.16)	\$ 0.09

At December 31, the net fair value of energy-related derivative contracts by hedge designation was reflected in the financial statements as assets/(liabilities) as follows:

	2008	2007
	(in millions)	
Cash flow hedges	\$ (0.88)	\$ 0.1
On-accounting hedges	4.2	3.3
<b>Contract value</b>	<b>\$ 3.4</b>	<b>\$ 3.4</b>

Unrealized pre-tax gains and losses from energy-related derivative contracts recognized in income were not material for any year presented.

The maturities of the energy-related derivative contracts and the level of the fair value hierarchy in which they fall at December 31, 2008 are as follows:

	December 31, 2008 Fair Value Measurements			
	Total Fair Value	Maturity		
		Year 1	Years 2&3	Years 4&5
		(in millions)		
Level 1	\$ —	\$ —	\$ —	\$ —
Level 2	3.4	3.3	0.1	—
Level 3	—	—	—	—
<b>Fair value of contracts outstanding at end of period</b>	<b>\$ 3.4</b>	<b>\$ 3.3</b>	<b>\$ 0.1</b>	<b>\$ —</b>

As part of the adoption of FASB Statement No. 157, "Fair Value Measurements" to increase consistency and comparability in fair value measurements and related disclosures, the table above now uses the three-tier fair value hierarchy, as discussed in Note 8 to the financial statements, as opposed to the previously used descriptions "actively quoted," "external sources," and "models and other methods." The three-tier fair value hierarchy focuses on the fair value of the contract itself, whereas the previous descriptions focused on the source of the inputs. Because the Company uses over-the-counter contracts that are not exchange traded but are fair valued using prices which are actively quoted, the valuations of those contracts now appear in Level 2; previously they were shown as "actively quoted."

The Company is exposed to market-price risk in the event of nonperformance by counterparties to energy-related derivative contracts. The Company's practice is to enter into agreements with counterparties that have investment grade credit ratings by Standard & Poor's and Moody's or with counterparties who have posted collateral to cover potential credit exposure. Therefore, the Company does not anticipate market risk exposure from nonperformance by the counterparties. For additional information, see Notes 1 and 6 to the financial statements under "Financial Instruments."

**MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)**  
**Southern Power Company and Subsidiary Companies 2008 Annual Report**

**Capital Requirements and Contractual Obligations**

The capital program of the Company is currently estimated to be \$748.9 million for 2009, \$658.9 million for 2010, and \$768.6 million for 2011. These amounts include estimates for potential plant acquisitions and new construction as well as ongoing capital improvements. Planned expenditures for plant acquisitions may vary due to market opportunities and the Company's ability to execute its growth strategy. Actual construction costs may vary from these estimates because of changes in factors such as: business conditions; environmental statutes and regulations; FERC rules and regulations; load projections; the cost and efficiency of construction labor, equipment, and materials; and the cost of capital. On December 5, 2008, the Company announced plans to construct four combustion turbine units in North Carolina. See FUTURE EARNINGS POTENTIAL — "Construction Projects" herein for additional information.

Other funding requirements related to obligations associated with scheduled maturities of long-term debt, as well as the related interest, leases, derivative obligations, and other purchase commitments are as follows. See Notes 1, 6, and 7 to the financial statements for additional information.

**Contractual Obligations**

	2009	2010- 2011	2012- 2013	After 2013	Total
	(in millions)				
Long-term debt (a)					
Principal	\$ —	\$ —	\$ 575.0	\$ 725.0	\$ 1,300.0
Interest	7.5	48.6	12.6	84.4	149.1
Energy-related derivative obligations (b)	7.5	0.2	—	—	7.7
Operating leases	0.4	0.3	0.8	22.3	23.8
Purchase commitments (c) —					
Capital expenditures	748.9	658.9	768.6	—	2,176.4
Natural gas (e)	40.6	269.0	101.0	316.2	726.8
Purchased power (d)	13.5	21.2	98.6	86.9	219.2
Long-term service agreements (g)	34.4	96.3	84.4	986.9	1,202.0
Total	\$ 845.3	\$ 1,031.3	\$ 927.4	\$ 2,115.5	\$ 4,919.5

- ) All amounts are reflected based on final maturity dates. The Company plans to retire higher-cost securities and replace these obligations with lower-cost capital if market conditions permit.
- ) For additional information, see Notes 1 and 6 to the financial statements.
- ) The Company generally does not enter into non-cancelable commitments for other operations and maintenance expenditures. Total other operations and maintenance expenses for the last three years were \$147.7 million, \$135.0 million, and \$95.3 million, respectively.
- ) The Company forecasts capital expenditures over a three-year period. Amounts represent estimates for potential plant acquisitions and new construction as well as ongoing capital improvements.
- ) Natural gas purchase commitments are based on various indices at the time of delivery. Amounts reflected have been estimated based on New York Mercantile Exchange future prices at December 31, 2008.
- ) Purchased power commitments of \$71.5 million in 2012-2013 and \$316.1 million after 2013 will be resold under a third party agreement to EnergyUnited. The purchases will be resold at cost.
- ) Long-term service agreements include price escalation based on inflation indices.

**MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)**  
**Southern Power Company and Subsidiary Companies 2008 Annual Report**

**Cautionary Statement Regarding Forward-Looking Statements**

The Company's 2008 Annual Report contains forward-looking statements. Forward-looking statements include, among other things, statements concerning environmental regulations and expenditures, financing activities, access to sources of capital, impacts of the adoption of new accounting rules, estimated sales and purchases under new power sale and purchase agreements, impacts of revisions to depreciation estimates, completion of construction projects, plans and estimated costs for new generation resources, and estimated construction and other expenditures. In some cases, forward-looking statements can be identified by terminology such as "may," "will," "could," "should," "expects," "plans," "anticipates," "believes," "estimates," "projects," "predicts," "potential," or "continue" or the negative of these terms or other similar terminology. There are various factors that could cause actual results to differ materially from those suggested by the forward-looking statements; accordingly, there can be no assurance that such indicated results will be realized. These factors include:

the impact of recent and future federal and state regulatory change, including legislative and regulatory initiatives regarding deregulation and restructuring of the electric utility industry, implementation of the Energy Policy Act of 2005, environmental laws including regulation of water quality and emissions of sulfur, nitrogen, mercury, carbon, soot, or particulate matter and other substances, and also changes in tax and other laws and regulations to which the Company is subject, as well as changes in application of existing laws and regulations;

current and future litigation, regulatory investigations, proceedings, or inquiries, including FERC matters;

the effects, extent, and timing of the entry of additional competition in the markets in which the Company operates;

variations in demand for electricity, including those relating to weather, the general economy, population and business growth (and declines), and the effects of energy conservation measures;

available sources and costs of fuels;

effects of inflation;

advances in technology;

state and federal rate regulations;

the ability to control costs and avoid cost overruns during the development and construction of facilities;

internal restructuring or other restructuring options that may be pursued;

potential business strategies, including acquisitions or dispositions of assets or businesses, which cannot be assured to be completed or beneficial to the Company;

the ability of counterparties of the Company to make payments as and when due and to perform as required;

the ability to obtain new short- and long-term contracts with wholesale customers;

the direct or indirect effect on the Company's business resulting from terrorist incidents and the threat of terrorist incidents;

interest rate fluctuations and financial market conditions and the results of financing efforts, including the Company's credit ratings;

the ability of the Company to obtain additional generating capacity at competitive prices;

catastrophic events such as fires, earthquakes, explosions, floods, hurricanes, droughts, pandemic health events such as an avian influenza, or other similar occurrences;

the direct or indirect effects on the Company's business resulting from incidents similar to the August 2003 power outage in the Northeast;

the effect of accounting pronouncements issued periodically by standard-setting bodies; and

other factors discussed elsewhere herein and in other reports (including the Form 10-K) filed by the Company from time to time with the



SEC.

**he Company expressly disclaims any obligation to update any forward-looking statements.**

II-386

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[Table of Contents](#)

**CONSOLIDATED STATEMENTS OF INCOME**  
**for the Years Ended December 31, 2008, 2007, and 2006**  
**Southern Power Company and Subsidiary Companies 2008 Annual Report**

	2008	2007	2006
	(In thousands)		
<b>Operating Revenues</b>			
Wholesale revenues —			
Non-affiliates	\$ 667,939	\$ 416,648	\$ 279,384
Affiliates	638,266	547,229	491,762
Other revenues	57,296	8,137	5,902
<b>Total operating revenues</b>	<b>1,313,541</b>	<b>972,014</b>	<b>777,048</b>
<b>Operating Expenses</b>			
Fuel	424,800	238,680	145,236
Purchased power			
Non-affiliates	132,222	64,604	53,795
Affiliates	195,743	153,836	116,902
Other operations and maintenance	147,711	134,971	95,276
Depreciation and amortization	160,116	143,885	116,902
Loss on IGCC project	—	17,619	—
Provision for bad debts	88,511	75,985	65,939
Taxes other than income taxes	17,700	15,744	15,637
<b>Total operating expenses</b>	<b>1,000,673</b>	<b>680,939</b>	<b>492,805</b>
<b>Operating Income</b>	<b>312,869</b>	<b>291,075</b>	<b>284,243</b>
<b>Other Income and (Expense)</b>			
Interest expense, net of amounts capitalized	(83,211)	(79,175)	(80,154)
Other income (expense) net	7,893	3,286	2,191
<b>Total other income and (expense)</b>	<b>(75,618)</b>	<b>(75,890)</b>	<b>(77,963)</b>
<b>Earnings Before Income Taxes</b>	<b>237,251</b>	<b>215,185</b>	<b>206,280</b>
<b>Income taxes</b>	<b>92,892</b>	<b>83,548</b>	<b>81,811</b>
<b>Net Income</b>	<b>144,359</b>	<b>131,637</b>	<b>124,469</b>

The accompanying notes are an integral part of these financial statements.

**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**for the Years Ended December 31, 2008, 2007, and 2006**  
**Southern Power Company and Subsidiary Companies 2008 Annual Report**

	2008	2007	2006
	(in thousands)		
<b>Operating Activities:</b>			
Net income	\$ 144,359	\$ 131,637	\$ 124,469
Adjustments to reconcile net income to net cash provided from operating activities:			
Depreciation and amortization	102,783	89,221	82,365
Deferred income taxes	70,938	31,668	33,150
Deferred revenues	(704)	(4,852)	2,248
Mark-to-market adjustments	(925)	(4,093)	(328)
Accumulated billings on construction contract	85,619	60,417	12,810
Accumulated costs on construction contract	(110,096)	(127,645)	(7,198)
Loss on IGCC project	—	17,619	—
Gain on sale of property	(6,015)	—	—
Other, net	4,852	7,874	2,484
Changes in certain current assets and liabilities:			
Receivables	(11,156)	(3,155)	38,479
Fossil fuel stock	(2,640)	(4,105)	(374)
Materials and supplies	2,773	(1,169)	(119)
Prepaid income taxes	(21,868)	—	—
Other current assets	1,413	(1,863)	(3,003)
Accounts payable	10,451	22,028	(34,165)
Accrued taxes	(1,622)	1,474	(8,522)
Accrued interest	(1,521)	219	687
Other current liabilities	(3,575)	—	—
<b>Net cash provided from operating activities</b>	<b>261,265</b>	<b>315,417</b>	<b>242,885</b>
<b>Investing Activities:</b>			
Property additions	(49,664)	(53,319)	(53,319)
Acquisition of plant facilities	—	—	(409,213)
Net of property	5,073	—	—
Sale of property to affiliates	—	4,291	15,674
Change in construction payables	(7,390)	(1,966)	10,965
Payments pursuant to long-term service agreements	(31,725)	(44,471)	(35,678)
Other	(1,624)	(1,119)	—
<b>Net cash used for investing activities</b>	<b>(85,770)</b>	<b>(183,852)</b>	<b>(474,065)</b>
<b>Financing Activities:</b>			
Increase (decrease) in notes payable, net	(49,748)	(74,004)	13,060
Senior notes	—	—	200,000
Capital contributions	3,642	2,532	108,689
Redemptions —			
Other long-term debt	—	(1,809)	(200)
Payment of common stock dividends	(94,500)	(89,800)	(77,700)
Other	—	(24)	(10,471)
<b>Net cash provided from (used for) financing activities</b>	<b>(140,606)</b>	<b>(161,504)</b>	<b>233,378</b>
<b>Change in Cash and Cash Equivalents</b>	<b>34,889</b>	<b>(29,941)</b>	<b>22,298</b>
<b>Cash and Cash Equivalents at Beginning of Year</b>	<b>5</b>	<b>29,929</b>	<b>27,631</b>
<b>End Cash and Cash Equivalents at End of Year</b>	<b>39,894</b>	<b>29,929</b>	<b>49,929</b>
<b>Supplemental Cash Flow Information:</b>			
Cash paid during the period for:			
Interest (net of \$7,075, \$16,541 and \$5,648 capitalized, respectively)	\$ 69,716	\$ 63,766	\$ 65,206

Income tax expense (benefit)	1,361	50,722	52,608
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he accompanying notes are an integral part of these financial statements.

**CONSOLIDATED BALANCE SHEETS**  
**at December 31, 2008 and 2007**  
**Southern Power Company and Subsidiary Companies 2008 Annual Report**

Assets	2008	2007
	(in thousands)	
<b>Current Assets</b>		
Cash and cash equivalents	\$ 37,894	\$ 5
Receivables		
Customer accounts receivable	23,640	19,100
Other accounts receivable	2,162	1,024
Affiliated companies	33,401	27,004
Fuel and stock at average cost	17,801	15,160
Materials and supplies, at average cost	26,527	19,284
Prepaid long-term agreements - current	16,304	14,249
Prepaid income taxes	18,066	135
Other prepaid expenses	2,788	2,703
Assets from risk management activities	10,799	16,079
	4,533	7,226
<b>Total current assets</b>	<b>203,882</b>	<b>118,956</b>
<b>Property, Plant, and Equipment</b>		
Service	2,847,757	2,534,507
Less accumulated provision for depreciation	351,193	10,280,962
	2,496,564	2,253,545
Construction work in progress	8,775	280,084
<b>Total property, plant, and equipment</b>	<b>2,505,339</b>	<b>2,536,629</b>
<b>Deferred Charges and Other Assets</b>		
Prepaid long-term service agreements	81,542	87,058
Other		
Affiliated	3,827	4,138
Other	18,450	21,593
<b>Total deferred charges and other assets</b>	<b>103,919</b>	<b>113,189</b>
<b>Total Assets</b>	<b>\$ 2,813,140</b>	<b>\$ 2,768,774</b>

The accompanying notes are an integral part of these financial statements.

# CONSOLIDATED BALANCE SHEETS

at December 31, 2008 and 2007

Southern Power Company and Subsidiary Companies 2008 Annual Report

Liabilities and Stockholder's Equity	2008	2007
	(in thousands)	
<b>Current Liabilities:</b>		
Notes payable	\$ —	\$ 49,748
Accounts payable		
Affiliated	62,732	48,475
Other	11,278	20,322
Accrued taxes —		
Income taxes	88	392
Other	2,343	2,658
Liabilities from risk management activities	7,452	12,639
Billings in excess of cost on construction contract	11,907	36,354
Other	224	9,523
<b>Total current liabilities</b>	<b>122,940</b>	<b>210,409</b>
<b>Long-Term Debt:</b>		
Notes		
6.25% due 2012	575,000	575,000
4.875% due 2015	35,000	35,000
6.375% due 2036	200,000	200,000
Unamortized discount	(2,669)	(2,901)
<b>Long-term debt</b>	<b>1,297,353</b>	<b>1,297,099</b>
<b>Deferred Credits and Other Liabilities:</b>		
Accumulated deferred income taxes	209,960	138,128
Deferred capacity revenues — Affiliated	32,411	34,801
Other —		
Affiliated	6,667	7,734
Other	2,648	2,801
<b>Total deferred credits and other liabilities</b>	<b>251,686</b>	<b>183,464</b>
<b>Total Liabilities</b>	<b>1,674,779</b>	<b>1,690,887</b>
<b>Common Stockholder's Equity:</b>		
Common stock, par value \$0.01 per share —		
Authorized — 1,000,000 shares		
Outstanding — 1,000 shares	—	—
Additional paid-in capital	862,109	788,486
Retained earnings	302,309	253,131
Cumulative other comprehensive income (loss)	(28,037)	(39,710)
<b>Total common stockholder's equity</b>	<b>1,138,361</b>	<b>1,077,887</b>
<b>Total liabilities and stockholder's equity</b>	<b>2,813,140</b>	<b>2,768,774</b>
<b>Commitments and Contingent Matters (See notes)</b>		

The accompanying notes are an integral part of these financial statements.

**CONSOLIDATED STATEMENTS OF COMMON STOCKHOLDER'S EQUITY**  
**For the Years Ended December 31, 2008, 2007, and 2006**  
**Southern Power Company and Subsidiary Companies 2008 Annual Report**

	Common Stock	Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total
	(in thousands)				
Balance at December 31, 2005	\$ —	\$ 746,243	\$ 164,215	\$ (44,425)	\$ 866,033
Net income	—	—	124,469	—	124,469
Capital contributions from parent company	—	108,689	—	—	108,689
Other comprehensive income (loss)	—	—	—	3,701	3,701
Cash dividends on common stock	—	—	(97,700)	—	(97,700)
Other	—	1	1	—	2
Balance at December 31, 2006	—	\$ 854,933	\$ 211,294	\$ (40,724)	\$ 1,025,503
Net income	—	—	131,637	—	131,637
Capital contributions from parent company	—	8,995	—	—	8,995
Other comprehensive income (loss)	—	—	—	7,014	7,014
Cash dividends on common stock	—	—	(89,800)	—	(89,800)
Other	—	—	(1)	—	(1)
Balance at December 31, 2007	—	\$ 864,128	\$ 253,131	\$ (33,710)	\$ 1,083,549
Net income	—	—	144,359	—	144,359
Capital contributions from parent company	—	3,642	—	—	3,642
Other comprehensive income (loss)	—	—	—	7,653	7,653
Cash dividends on common stock	—	—	(94,400)	—	(94,400)
Other	—	1	(681)	—	(680)
Balance at December 31, 2008	—	\$ 867,771	\$ 203,489	\$ (26,057)	\$ 1,045,203

The accompanying notes are an integral part of these financial statements.

**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
**For the Years Ended December 31, 2008, 2007, and 2006**  
**Southern Power Company and Subsidiary Companies 2008 Annual Report**

	2008	2007	2006
	(in thousands)		
Net income	\$ 144,359	\$ 131,637	\$ 124,469
Other comprehensive income (loss):			
Qualifying hedges:			
Changes in fair value, net of tax of \$351, \$(558), and \$(2,801), respectively	529	(842)	(4,263)
Reclassification adjustment for amounts included in net income, net of tax of \$2,144, \$(4,334), and \$(3,922), respectively	2,144	(4,334)	(3,922)
Total other comprehensive income (loss)	7,653	7,014	3,701
Comprehensive income	\$ 152,012	\$ 138,651	\$ 128,170

The accompanying notes are an integral part of these financial statements.

## Table of Contents

### **NOTES TO FINANCIAL STATEMENTS**

#### **Southern Power Company and Subsidiary Companies 2008 Annual Report**

### **SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

#### **General**

Southern Power Company (the Company) is a wholly-owned subsidiary of Southern Company, which is also the parent company of four additional operating companies, Southern Company Services, Inc. (SCS), Southern Communications Services, Inc. (SouthernLINC Wireless), Southern Company Holdings, Inc. (Southern Holdings), Southern Nuclear Operating Company, Inc. (Southern Nuclear), and other direct and indirect subsidiaries. The traditional operating companies, Alabama Power Company (APC), Georgia Power Company (GPC), Gulf Power Company (Gulf Power), and Mississippi Power Company, are vertically integrated utilities providing electric service in four Southeastern states. The Company constructs, acquires, owns, and manages generation assets and sells electricity at market-based rates in the wholesale market. SCS, the system service company, provides, at cost, specialized services to Southern Company and its subsidiary companies. SouthernLINC Wireless provides digital wireless communications for use by Southern Company and its subsidiary companies and also markets these services to the public and provides fiber cable services within the Southeast. Southern Holdings is an intermediate holding company subsidiary for Southern Company's investments in leveraged leases and various other energy-related businesses. Southern Nuclear operates and provides services to Southern Company's nuclear power plants.

The Company is subject to regulation by the Federal Energy Regulatory Commission (FERC). The Company follows accounting principles generally accepted in the United States. The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires the use of estimates, and the actual results may differ from those estimates.

The financial statements include the accounts of the Company and its wholly-owned subsidiaries, Southern Company — Florida LLC, Oleander Power Project, LP (Oleander), DeSoto County Generating Company, LLC (DeSoto), and Southern Power Company — Orlando Gasification LLC (SPC-OG), which own, operate, and maintain the Company's ownership interests in Plant Stanton Unit A, Plant Oleander, Plant DeSoto, and construct the combined cycle for the Orlando Utilities Commission (OUC), respectively. See Note 2 under "DeSoto and Swan Acquisitions" and "Oleander Acquisition." All intercompany accounts and transactions have been eliminated in consolidation.

#### **Reclassifications**

Certain prior years' data presented in the financial statements have been reclassified to conform to the current year presentation. These reclassifications had no effect on total assets, net income, or cash flows. The consolidated statements of income for the periods presented have been modified within the operating expenses section to combine the line items "Other operations" and "Maintenance" into a single line item entitled "Other operations and maintenance." The consolidated statements of cash flows were modified to present a separate line item within the investing section for "Payments pursuant to long-term service agreements" previously included in "Property additions." The balance sheet as of December 31, 2007 was modified to reflect the amount of "Prepaid income taxes" previously included in "Other prepaid expenses."

#### **Affiliate Transactions**

The Company has an agreement with SCS under which the following services are rendered to the Company at amounts in compliance with FERC regulation: general and design engineering, purchasing, accounting and statistical analysis, finance and treasury, tax, information services, marketing, auditing, insurance and pension administration, human resources, systems and procedures, digital wireless communications, labor, and other services with respect to business and operations and power pool transactions. Because the Company has no employees, all employee-related charges are rendered at amounts in compliance with FERC regulation under agreements with SCS. Costs for these services from SCS amounted to approximately \$207.4 million in 2008, \$125.4 million in 2007, and \$77.8 million in 2006. Approximately \$7.9 million in 2008, \$74.1 million in 2007, and \$59.7 million in 2006 were operations and maintenance expenses; the remainder was recorded to construction work in progress, other assets, and billings in excess of cost on construction contract. Cost allocation methodologies used by SCS were approved by the Securities and Exchange Commission prior to the repeal of the Public Utility Holding Company Act of 1935, as amended, and management believes they are reasonable. The FERC permits services to be rendered at cost by system service companies.

In 2003, the Company entered into agreements with APC and GPC under which APC and GPC operated and maintained Plants Dahlberg, Mansley, Franklin, and Harris. GPC also supplied various services for other plants. In August 2007, those agreements were terminated and replaced with service agreements under which APC and GPC provide specifically requested services to the Company. These services are billed at amounts in compliance with FERC regulation on a monthly basis and are recorded as



## Table of Contents

### **NOTES (continued)**

#### **Southern Power Company and Subsidiary Companies 2008 Annual Report**

operations and maintenance expenses in the consolidated statements of income. For the periods ended December 31, 2008, 2007, and 2006, billings under these agreements totaled approximately \$2.9 million, \$9.2 million, and \$7.6 million, respectively.

Total billings for all purchased power agreements (PPAs) in effect with affiliates totaled \$539.6 million, \$505.2 million, and \$467.9 million in 2008, 2007, and 2006, respectively. Included in these billings were \$32.2 million, \$34.8 million, and \$36.3 million of "Deferred capacity revenues — affiliated" recorded on the balance sheets at December 31, 2008, December 31, 2007, and December 31, 2006, respectively. The Company and the traditional operating companies may jointly enter into various types of wholesale energy, natural gas, and certain other contracts, either directly or through SCS as agent. Each participating company may be jointly and severally liable for the obligations incurred under these agreements.

The Company and the traditional operating companies generally settle amounts related to the above transactions on a monthly basis in the month following the performance of such services or the purchase or sale of electricity.

In 2008, Gulf Power and APC sold turbine rotor assemblies to the Company for \$9.4 million and \$6.3 million, respectively. Additionally, the Company sold a turbine rotor assembly to APC for \$8.2 million and sold a compressor assembly to GPC for \$3.9 million. No gain or loss was recognized in the Company's consolidated statements of income. These affiliate transactions were made in accordance with FERC and state Public Service Commission (PSC) rules and guidelines.

In 2007, the Company sold plots of land in Prattville, Alabama and Chilton County, Alabama to APC. The total sales price was \$4.3 million and is recorded in "Sale of property to affiliates" on the statements of cash flows. In addition, the Company sold a turbine rotor to Gulf Power for \$7.9 million. No gain or loss was recognized in the Company's consolidated statements of income. These affiliate transactions were made in accordance with FERC and state PSC rules and guidelines.

In 2006, the Company sold its membership interests in Cherokee Falls Development of South Carolina LLC to Southern Company's nuclear development affiliate. The sales price was \$15.7 million and is recorded in "Sale of property to affiliates" on the statement of cash flows. No gain or loss was recognized in the Company's consolidated statements of income.

#### **Revenues**

Capacity is sold at rates specified under contractual terms and is recognized at the lesser of the levelized amount or the amount billable under the contract over the respective contract periods. Energy is generally sold at market-based rates and the associated revenue is recognized as the energy is delivered. Transmission revenues and other fees are recognized as incurred as other operating revenue. Revenues are recorded on a gross basis for all full requirements PPAs. See "Financial Instruments" for additional information.

Significant portions of the Company's revenues have been derived from certain customers pursuant to PPAs. For the year ended December 31, 2008, GPC accounted for 36.5% of total revenues, Sawnee Electric Membership Corporation accounted for 6.1% of total revenues, and Flint Electric Membership Corporation accounted for 5.3% of total revenues. For the year ended December 31, 2007, GPC accounted for 45.6% of total revenues, APC accounted for 6.9% of total revenues, and Sawnee Electric Membership Corporation accounted for 5.5% of total revenues. For the year ended December 31, 2006, GPC accounted for 52.7% of total revenues, APC accounted for 8.2% of total revenues, and Flint Electric Membership Corporation accounted for 4.6% of total revenues.

The Company has a long-term contract for engineering, procurement, and construction services to build a combined cycle unit for OUC. Construction activities commenced in 2006 and are expected to be complete by the end of 2009. Revenue and costs are recognized using the percentage-of-completion method. The Company utilizes the cost-to-cost approach as this method is less subjective than relying on assessments of physical progress. The percentage of completion represents the percentage of the total costs incurred to the estimated total cost of the contract. Revenues and costs are recognized by applying this percentage to the total revenues and estimated costs of the contract.

## **Table of Contents**

### **OTES (continued)**

### **Southern Power Company and Subsidiary Companies 2008 Annual Report**

#### **Fuel Costs**

Fuel costs are expensed as the fuel is consumed.

#### **Income and Other Taxes**

The Company uses the liability method of accounting for deferred income taxes and provides deferred income taxes for all significant income tax temporary differences. In accordance with Financial Accounting Standards Board (FASB) Interpretation No. 48, "Accounting for Uncertainty in Income Taxes" (FIN 48), the Company recognizes tax positions that are "more likely than not" of being sustained upon examination by the appropriate taxing authorities. See Note 5 under "Unrecognized Tax Benefits" for additional information.

#### **Property, Plant, and Equipment**

The Company's depreciable property, plant, and equipment consist entirely of generation assets.

Property, plant, and equipment is stated at original cost. Original cost includes materials, direct labor incurred by contractors and affiliated companies, minor items of property, and interest capitalized. Interest is capitalized on qualifying projects during the development and construction period. The cost to replace significant items of property defined as retirement units is capitalized. The cost of maintenance, repairs, and replacement of minor items of property is charged to maintenance expense as incurred.

#### **Depreciation**

Depreciation of the original cost of assets is computed under the straight-line method and applies a composite depreciation rate based on the assets' estimated useful lives determined by the Company. The primary assets in property, plant, and equipment are power plants, all of which have an estimated composite depreciable life ranging from 29-37 years. These lives reflect a composite of the significant components (retirement units) that make up the plants. The Company reviews its estimated useful lives and salvage values on an ongoing basis. The results of these reviews could result in changes which could have a material impact on net income in the near term.

A depreciation study was completed and the applicable remaining plant lives and associated depreciation rates were revised in January 2008. This change in estimate was due to revised useful life assumptions for certain components of plant in service. Depreciation rates by generating capability changed from a range of 2.8% to 3.8% to an adjusted range of 1.8% to 4.1%. These changes increased depreciation and reduced income from continuing operations and net income by \$4.6 million and \$2.8 million, respectively, for 2008.

When property subject to composite depreciation is retired or otherwise disposed of in the normal course of business, its cost is charged to accumulated depreciation. For other property dispositions, the applicable cost and accumulated depreciation is removed from the accounts and gain or loss is recognized.

#### **Asset Retirement Obligations and Other Costs of Removal**

The present value of the ultimate costs for an asset's future retirement is recorded in the period in which the liability is incurred. The costs are capitalized as part of the related long-lived asset and depreciated over the asset's useful life.

At December 31, 2008, the Company had no material liability for asset retirement obligations.

#### **Interest Capitalized**

Interest related to the construction of new facilities is capitalized in accordance with standard interest capitalization requirements per FASB Statement No. 34, "Capitalization of Interest Cost."

#### **Impairment of Long-Lived Assets and Intangibles**

The Company evaluates long-lived assets for impairment when events or changes in circumstances indicate that the carrying value of such assets may not be recoverable. The determination of whether impairment has occurred is based on an estimate of undiscounted future cash flows attributable to the assets, as compared with the carrying value of the assets. If an impairment has occurred, the

## **NOTES (continued)**

### **Southern Power Company and Subsidiary Companies 2008 Annual Report**

Amount of the impairment recognized is determined by estimating the fair value of the assets and recording a loss if the carrying value is greater than the fair value. For assets identified as held for sale, the carrying value is compared to the estimated fair value less the cost to sell in order to determine if an impairment loss is required. Until the assets are disposed of, their estimated fair value is re-evaluated when circumstances or events change.

### **Deferred Project Development Costs**

The Company capitalizes project development costs once it is determined that it is probable that a specific site will be acquired and a power plant constructed. These costs include professional services, permits, and other costs directly related to the construction of a new project. These costs are generally transferred to construction work in progress upon commencement of construction. The total deferred project development costs were \$8.9 million at December 31, 2008, \$8.4 million at December 31, 2007, and \$1.3 million at December 31, 2006.

### **Cash and Cash Equivalents**

For purposes of the financial statements, temporary cash investments are considered cash equivalents. Temporary cash investments are securities with original maturities of 90 days or less.

### **Materials and Supplies**

Generally, materials and supplies include the average costs of generating plant materials. Materials are charged to inventory when purchased and then expensed or capitalized to plant, as appropriate, at weighted average cost when installed.

### **Fuel Inventory**

Fuel inventory includes the cost of oil and emission allowances. The Company maintains minimal oil levels for use at Plant Dahlberg, Plant Leander, Plant DeSoto, and Plant Rowan. Inventory is maintained using the weighted average cost method. Fuel inventory and emissions allowances are recorded at actual cost when purchased and then expensed at weighted average cost as used.

### **Financial Instruments**

The Company uses derivative financial instruments to limit exposure to fluctuations in interest rates, the prices of certain fuel purchases, and electricity purchases and sales. All derivative financial instruments are recognized as either assets or liabilities (categorized in "Other" or shown separately as "Risk Management Activities") and are measured at fair value. See Note 8 for additional information. Substantially all of the Company's bulk energy purchases and sales contracts that meet the definition of a derivative are exempt from fair value accounting requirements and are accounted for under the accrual method. Other derivative contracts qualify as cash flow hedges of anticipated transactions. This results in the deferral of related gains and losses in other comprehensive income until the hedged transactions occur. Any effectiveness is recognized currently in net income. Other derivative contracts are marked to market through current period income and are recorded in the financial statement line item where they will eventually settle. See Note 6 under "Financial Instruments" for additional information.

The Company does not offset fair value amounts recognized for multiple derivative instruments executed with the same counterparty under a master netting arrangement. Additionally, the Company had no outstanding collateral repayment obligations or rights to reclaim collateral arising from derivative instruments recognized at December 31, 2008.

The Company is exposed to losses related to financial instruments in the event of counterparties' nonperformance. The Company has established controls to determine and monitor the creditworthiness of counterparties in order to mitigate the Company's exposure to counterparty credit risk.

The Company's financial instruments for which the carrying amounts did not equal fair value at December 31 were as follows:

	Carrying Amount	Fair Value
	(in millions)	
2008	\$ 1,297	\$ 1,270
2007	\$ 1,297	\$ 1,270

## Table of Contents

### OTES (continued)

#### Southern Power Company and Subsidiary Companies 2008 Annual Report

The fair values were based on either closing market prices (Level 1) or closing prices of comparable instruments (Level 2). See Note 8 for all other items recognized at fair value in the financial statements.

### Comprehensive Income

The objective of comprehensive income is to report a measure of all changes in common stock equity of an enterprise that result from transactions and other economic events of the period other than transactions with owners. Comprehensive income consists of net income and changes in the fair value of qualifying cash flow hedges, less income taxes and reclassifications of amounts included in net income.

### Other Income (Expense)

Other income (expense) includes non-operating revenues and expenses which are recognized when earned. In 2008, the Company received a net of \$6.4 million for participating in an asset auction. The Company was not the successful bidder in the asset auction.

## ACQUISITIONS

### Oleander Acquisition

In June 2005, the Company acquired all of the outstanding general and limited partnership interests of Oleander from subsidiaries of Constellation Energy Group, Inc. The results of Oleander's operations have been included in the Company's consolidated financial statements since that date. The Company's acquisition of the general and limited partnership interests in Oleander was pursuant to a Purchase and Sale Agreement dated April 8, 2005, for an aggregate total cost of approximately \$218.1 million, including approximately \$11.9 million of working capital and other adjustments. At the time of acquisition, Plant Oleander, a dual-fueled generating plant in Brevard County, Florida, had a nameplate capacity of 628 megawatts (MW). The Oleander acquisition was in accordance with the Company's overall growth strategy.

Subsequent to the acquisition, the Company completed construction of Plant Oleander Unit 5 in December 2007. This unit is a combustion turbine with a nameplate capacity of 163 MW and is contracted to provide annual capacity for a PPA with the Florida Municipal Power Agency from 2007 through 2027.

### DeSoto and Rowan Acquisitions

Effective June 1, 2006, the Company acquired all of the outstanding membership interests of DeSoto County Generating Company, LLC (DeSoto) from a subsidiary of Progress Energy, Inc. The results of DeSoto's operations have been included in the Company's consolidated financial statements since that date. The Company's acquisition of the membership interest in DeSoto was pursuant to an agreement dated May 8, 2006, for an aggregate total cost of \$79.7 million. DeSoto owns a dual-fired generating plant near Arcadia, Florida with a nameplate capacity of 344 MW. The DeSoto acquisition was in accordance with the Company's overall growth strategy.

Effective September 1, 2006, the Company acquired all of the outstanding membership interests of Rowan County Power, LLC (Rowan) from a subsidiary of Progress Energy, Inc. Rowan was merged into the Company, and the results of Rowan's operations have been included in the Company's consolidated financial statements since that date. The Company's acquisition of the membership interests in Rowan was pursuant to an agreement dated May 8, 2006 for an aggregate total cost of \$329.5 million. Through the Rowan acquisition, the Company owns a dual-fueled generating plant near Salisbury, North Carolina with a nameplate capacity of 986 MW. The Rowan acquisition was in accordance with the Company's overall growth strategy.

The pro forma data of the Company below is unaudited and gives effect to the DeSoto and Rowan plant acquisitions as if they had occurred at January 1, 2006. The unaudited pro forma financial information is not intended to represent or be indicative of the consolidated results of operations or financial condition of the Company that would have been reported had the acquisitions been completed as of the dates presented. It should be taken as representative of any future consolidated results of operations or financial condition of the Company.

#### For the Twelve Months Ended December 31, 2006

	(in thousands)
Pro forma revenues	\$ 795,701
Pro forma net income	118,703

**OTES (continued)**

**Southern Power Company and Subsidiary Companies 2008 Annual Report**

**CONTINGENCIES AND REGULATORY MATTERS**

**General Litigation Matters**

The Company is subject to certain claims and legal actions arising in the ordinary course of business. In addition, the Company's business activities are subject to extensive governmental regulation related to public health and the environment. Litigation over environmental issues and claims of various types, including property damage, personal injury, common law nuisance, and citizen enforcement of environmental requirements such as opacity and air and water quality standards, has increased generally throughout the United States. In particular, personal injury claims for damages caused by alleged exposure to hazardous materials have become more frequent. The ultimate outcome of such pending or potential litigation against the Company and its subsidiaries cannot be predicted at this time; however, for current proceedings not specifically reported herein, management does not anticipate that the liabilities, if any, arising from such current proceedings would have a material adverse effect on the Company's financial statements.

**FERC Matters**

***Market-Based Rate Authority***

The Company has authorization from the FERC to sell power to non-affiliates, including short-term opportunity sales, at market-based prices. Specific FERC approval must be obtained with respect to a market-based contract with an affiliate.

In December 2004, the FERC initiated a proceeding to assess Southern Company's generation dominance within its retail service territory. The ability to charge market-based rates in other markets is not an issue in the proceeding. Any new market-based rate sales by the Company in Southern Company's retail service territory entered into during a 15-month refund period that ended in May 2006 could be subject to refund to cost-based rate level.

In November 2007, the presiding administrative law judge issued an initial decision regarding the methodology to be used in the generation dominance tests. The proceedings are ongoing. The ultimate outcome of this generation dominance proceeding cannot now be determined, but an adverse decision by the FERC in a final order could require the Company to charge cost-based rates for certain wholesale sales in the Southern Company retail service territory, which may be lower than negotiated market-based rates, and could also result in total refunds of up to \$0.7 million, plus interest. The Company believes that there is no meritorious basis for an adverse decision in this proceeding and is vigorously defending itself in this matter.

In June 2007, the FERC issued its final rule in Order No. 697 regarding market-based rate authority. The FERC generally retained its current market-based rate standards. Responding to a number of requests for rehearing, the FERC issued Order No. 697-A on April 21, 2008 and Order No. 697-B on December 12, 2008. These orders largely affirmed its prior revision and codification of the regulations governing market-based rates for public utilities. In accordance with the orders, Southern Company submitted to the FERC an updated market power analysis on September 2, 2008 related to its continued market-based rate authority. The ultimate outcome of this matter cannot now be determined.

On October 17, 2008, Southern Company filed with the FERC a revised market-based rate (MBR) tariff and a new cost-based rate (CBR) tariff. The revised MBR tariff provides for a "must offer" energy auction whereby Southern Company offers all of its available energy for sale in a day-ahead auction and an hour-ahead auction with reserve prices not to exceed the CBR tariff price, after considering Southern Company's native load requirements, reliability obligations, and sales commitments to third parties. All sales under the energy auction would be at market clearing prices established under the auction rules. The new CBR tariff provides for a cost-based price for wholesale sales of less than a year. On December 18, 2008, the FERC issued an order conditionally accepting the MBR tariff subject to certain revisions to the auction proposal. On January 21, 2009, Southern Company made a compliance filing that accepted all the conditions of the MBR tariff order. When the order becomes final, Southern Company will have 30 days to implement the wholesale auction. On December 31, 2008, the FERC issued an order conditionally accepting the CBR tariff subject to providing additional information concerning one aspect of the tariff. On January 30, 2009, Southern Company filed a response addressing the FERC inquiry to the CBR tariff order. Implementation of the energy auction in accordance with the MBR tariff order is expected to adequately mitigate going forward any presumption of market power that Southern Company may have in the Southern Company retail service territory. The timing of when the FERC may issue the final orders on the MBR and CBR tariffs and the ultimate outcome of these matters cannot be determined at this time.

**NOTES (continued)**

**Southern Power Company and Subsidiary Companies 2008 Annual Report**

**Intercompany Interchange Contract**

The majority of the Company's generation fleet is operated under the Intercompany Interchange Contract (IIC), as approved by the FERC. In May 2005, the FERC initiated a new proceeding to examine (1) the provisions of the IIC among the traditional operating companies, the Company, and SCS, as agent, under the terms of which the Southern Pool is operated, (2) whether any parties to the IIC have violated the FERC's standards of conduct applicable to utility companies that are transmission providers, and (3) whether Southern Company's code of conduct defining the Company as a "system company" rather than a "marketing affiliate" is just and reasonable. In connection with the formation of the Company, the FERC authorized the Company's inclusion in the IIC in 2000. The FERC also previously approved Southern Company's code of conduct.

In October 2006, the FERC issued an order accepting a settlement resolving the proceeding subject to Southern Company's agreement to accept certain modifications to the settlement's terms and Southern Company notified the FERC that it accepted the modifications. The modifications largely involve functional separation and information restrictions related to marketing activities conducted on behalf of the Company. In November 2006, Southern Company filed with the FERC a compliance plan in connection with the order. In April 2007, the FERC approved, with certain modifications, the plan submitted by Southern Company. In November 2007, Southern Company notified the FERC that the plan had been implemented. On December 12, 2008 the FERC division of audits issued its final audit report pertaining to compliance implementation and related matters. No comments challenging the audit report's findings were submitted. A decision is now pending from the FERC. The Company's cost of implementing the plan, including the modifications, is approximately \$7.0 million annually. The ultimate outcome of this matter cannot be determined at this time.

**Carbon Dioxide Litigation**

In February 26, 2008, the Native Village of Kivalina and the City of Kivalina filed a suit in the U.S. District Court for the Northern District of California against several electric utilities (including Southern Company), several oil companies, and a coal company. The plaintiffs are the governing bodies of an Inupiat village in Alaska. The plaintiffs contend that the village is being destroyed by erosion allegedly caused by global warming that the plaintiffs attribute to emissions of greenhouse gases by the defendants. The plaintiffs assert claims for public and private nuisance and contend that the defendants have acted in concert and are therefore jointly and severally liable for the plaintiffs' damages. The suit seeks damages for lost property values and for the cost of relocating the village, which is alleged to be \$95 million to \$400 million. On June 30, 2008, all defendants filed motions to dismiss this case. Southern Company believes that these claims are without merit and notes that the complaint cites no statutory or regulatory basis for the claims. The ultimate outcome of this matter cannot be determined at this time.

**JOINT OWNERSHIP AGREEMENTS**

**Plant Stanton A**

The Company is a 65% owner of Plant Stanton A, a combined-cycle project with a nameplate capacity of 630 MW. The unit is co-owned by OUC (28%), Florida Municipal Power Agency (3.5%), and Kissimmee Utility Authority (3.5%). The Company has a service agreement with OUC whereby SCS is responsible for the operation and maintenance of Plant Stanton A. As of December 31, 2008, \$150.9 million was recorded for the plant in service with associated accumulated depreciation of \$14.1 million. These amounts represent the Company's share of the total plant costs and each owner must provide its own financing. The Company's proportionate share of Plant Stanton A's operating expense is included in the corresponding operating expenses in the statements of income.

**Integrated Coal Gasification Combined Cycle (IGCC)**

In December 2005, the Company and OUC executed definitive agreements for development of a 285-MW IGCC project in Orlando, Florida. The definitive agreements provided that the Company would own at least 65% of the gasifier portion of the IGCC project. OUC would own the remainder of the gasifier portion and 100% of the combined cycle portion of the IGCC project. The Company signed cooperative agreements with the U.S. Department of Energy (DOE) that provided up to \$293.75 million in grant funding for the gasification portion of this project. The IGCC project was expected to begin commercial operation in 2010. Due to continuing uncertainty surrounding potential state regulations relating to greenhouse gas emissions, the Company and OUC mutually agreed to terminate the construction of the gasifier portion of the IGCC project in November 2007. The Company has continued construction of the gas-fired combined cycle generating facility for OUC. The Company recorded a loss in the fourth quarter 2007 of approximately \$17.6 million related to cancellation of the gasifier portion of the IGCC project. This amount is net of reimbursements from OUC and the DOE. This loss consists of the write-off of construction costs of \$14.0 million and an accrual for termination costs of \$3.6 million.

NOTES (continued)

Southern Power Company and Subsidiary Companies 2008 Annual Report

All termination costs were paid in 2008. As part of the termination agreement with OUC, the Company agreed to sell a tract of land in Orange County, Florida to OUC. The Company recorded a gain of \$6 million on this sale in 2008.

7. INCOME TAXES

Southern Company files a consolidated federal income tax return and combined tax returns for the State of Georgia, the State of Alabama, and the State of Mississippi. Under a joint consolidated income tax allocation agreement, each subsidiary's current and deferred tax expense is computed on a stand-alone basis, and no subsidiary is allocated more expense than would be paid if it filed a separate income tax return. In accordance with Internal Revenue Service (IRS) regulations, each company is jointly and severally liable for the tax liability.

Current and Deferred Income Taxes

Details of income tax provisions are as follows:

	2008	2007	2006
	(in thousands)		
<b>Federal</b>			
Current	\$ 18,948	\$ 42,841	\$ 39,653
Deferred	57,184	26,808	26,915
<b>Total</b>	<b>76,142</b>	<b>69,649</b>	<b>66,568</b>
<b>State</b>			
Current	3,605	9,042	9,008
Deferred	13,183	4,857	6,235
<b>Total</b>	<b>16,750</b>	<b>13,899</b>	<b>15,243</b>
<b>Total</b>	<b>\$ 92,892</b>	<b>\$ 83,548</b>	<b>\$ 81,811</b>

The tax effects of temporary differences between the carrying amounts of assets and liabilities in the financial statements and their respective tax bases, which give rise to deferred tax assets and liabilities, are as follows:

	2008	2007
	(in thousands)	
<b>Deferred tax liabilities</b>		
Accumulated depreciation and other property basis differences	\$ 214,098	\$ 209,038
Book/tax basis difference on asset transfers	4,312	4,564
Other	493	—
<b>Total</b>	<b>280,903</b>	<b>213,600</b>
<b>Deferred tax assets</b>		
Federal and state deferred taxes	19,910	18,459
Book/tax basis differences on asset transfers	7,962	9,027
Other comprehensive loss on interest rate swaps	32,886	38,066
Accelerated capacity revenues	14,279	14,166
Other	—	10,859
<b>Total</b>	<b>67,537</b>	<b>75,477</b>
<b>Net deferred tax liabilities</b>	<b>213,366</b>	<b>138,123</b>
Portion included in prepaid income taxes	(3,406)	—
<b>Deferred and deferred income taxes in the balance sheets</b>	<b>\$ 209,960</b>	<b>\$ 138,123</b>

Deferred tax liabilities are the result of property related timing differences. The transfer of the Plant McIntosh construction project to GPC in 2004 resulted in a deferred gain for federal income tax purposes. GPC is reimbursing the Company for the related tax liability balance of \$0.3 million. Of this total, \$0.5 million is included in the balance sheets in "Receivables - Affiliated companies" and the remainder is included in "Deferred Charges and Other Assets: Other - Affiliated."

Deferred tax assets consist primarily of timing differences related to the recognition of capacity revenues, and the deferred loss on interest rate swaps reflected in other comprehensive income. The transfer of Plants Dahlberg, Wansley, and Franklin to the Company from GPC in 2001 also resulted in a deferred gain for federal income tax purposes. The Company will reimburse GPC for the related

II-399

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# OTES (continued)

## outhern Power Company and Subsidiary Companies 2008 Annual Report

x asset of \$8.0 million. Of this total, \$1.3 million is included in the balance sheets in "Accounts payable – Affiliated" and the remainder is included in "Deferred Credits and Other Liabilities: Other – Affiliated."

### ffective Tax Rate

reconciliation of the federal statutory tax rate to the effective income tax rate is as follows:

	2008	2007	2006
Federal statutory rate	35.0%	35.0%	35.0%
State income tax, net of federal deduction	4.6	4.2	4.8
Other	(0.4)	(0.4)	(0.1)
Effective income tax rate	39.2%	38.8%	39.7%

The American Jobs Creation Act of 2004 created a tax deduction for a portion of income attributable to U.S. production activities as defined in the Internal Revenue Code of 1986, as amended, Section 199 (production activities deduction). The deduction is equal to a stated percentage of qualified production activities net income. The percentage is phased in over the years 2005 through 2010 with a 3% rate applicable to the years 2005 and 2006, a 6% rate applicable for years 2007 through 2009, and a 9% rate thereafter. This increase from 3% in 2006 to 6% in 2007 was the result of several factors that increased the Company's 2007 deduction by \$1.2 million over the 2006 deduction. The resulting additional tax benefit was \$0.4 million. The IRS has not clearly defined a methodology for calculating this deduction. However, Southern Company has agreed with the IRS on a calculation methodology and signed a closing agreement on December 11, 2008. Therefore, the Company reversed the unrecognized tax benefit and adjusted the deduction for all previous years to conform to the agreement which resulted in a decrease in the 2008 deduction when compared to the 2007 deduction. The net impact of the reversal of the unrecognized tax benefits combined with the application of the new methodology had no material effect on the Company's financial statements.

### Unrecognized Tax Benefits

Section 481 requires companies to determine whether it is "more likely than not" that a tax position will be sustained upon examination by the appropriate taxing authorities before any part of the benefit can be recorded in the financial statements. It also provides guidance on the recognition, measurement, and classification of income tax uncertainties, along with any related interest and penalties. For 2008, the total amount of unrecognized tax benefits decreased \$0.9 million, resulting in a balance of \$0.5 million as of December 31, 2008.

Changes during the year in unrecognized tax benefits were as follows:

	2008	2007
	(in millions)	
Unrecognized tax benefits at beginning of year	\$ 1.4	\$ 0.7
Tax positions from current periods	0.3	0.4
Adjustments from prior periods	0.1	0.8
Reductions due to settlements	(1.3)	—
Reductions due to expired statute of limitations	—	—
Balance at end of year	\$ 0.5	\$ 1.4

The reduction due to settlements relates to the agreement with the IRS regarding the production activities deduction methodology. See "Effective Tax Rate" above for additional information.

Impact on the Company's effective tax rate, if recognized, is as follows:

	2008	2007	Change
	(in millions)		
Unrecognized tax benefits not impacting the effective tax rate	0.5	0.5	0.0
Balance of unrecognized tax benefits	\$ 0.5	\$ 1.4	\$ 0.9

## Table of Contents

### NOTES (continued)

#### Southern Power Company and Subsidiary Companies 2008 Annual Report

Accrued interest for unrecognized tax benefits:

	2008	2007
	(in millions)	
Interest accrued at beginning of year	0.1	\$ —
Interest reclassified due to settlements	(0.1)	—
Interest accrued during the year	—	0.1
Balance at end of year	\$ —	\$ 0.1

The Company classifies interest on tax uncertainties as interest expense. The Company did not accrue any penalties on uncertain tax positions.

The IRS has audited and closed all tax returns prior to 2004. The audits for the state returns have either been concluded, or the statute of limitations has expired, for years prior to 2002.

It is reasonably possible that the amount of the unrecognized benefit with respect to a majority of the Company's unrecognized tax positions will increase or decrease within the next 12 months. At this time, an estimate of the range of reasonably possible outcomes cannot be determined.

## FINANCING

### Senior Notes

In 2008 and 2007, the Company did not issue any long-term debt securities. Long-term debt outstanding was \$1.3 billion at December 31, 2008 and 2007. The Company issued \$200 million aggregate principal amount of unsecured 30-year senior notes in 2006. The proceeds of the issuance were used to repay a portion of the Company's short-term indebtedness and for other general corporate purposes, including the company's construction program.

### Bank Credit Arrangements

The Company has a \$400 million unsecured syndicated revolving credit facility (Facility) expiring in July 2012. The purpose of the Facility is to provide liquidity support to the Company's commercial paper program and for other general corporate purposes. There were no borrowings outstanding under the Facility at December 31, 2008. Outstanding borrowings under the Facility at December 31, 2007 were \$13.0 million.

The Company is required to pay a commitment fee on the unused balance of the Facility. This fee is less than 1/8 of 1%. In 2008 and 2007, the company incurred approximately \$0.4 million and \$0.4 million, respectively, in expenses from commitment fees under the Facility.

During 2008, the Company borrowed under the Facility and also borrowed under uncommitted facilities. For the year ended December 31, 2008, the peak balance outstanding was \$95 million. The average amount outstanding was \$13.3 million in 2008. The average annual interest rate was 3.2%. At December 31, 2008, there were no outstanding balances.

The Facility contains a covenant that limits the ratio of debt to capitalization (each as defined in the Facility) to a maximum of 65%. The Facility also contains a cross default provision that would be triggered if the Company defaulted on other indebtedness above a specified threshold. As of December 31, 2008, the Company was in compliance with all such covenants.

The Company has established a commercial paper program. For the year ended December 31, 2008, the peak commercial paper balance outstanding was \$103.2 million. The average amount outstanding was \$38.2 million in 2008. The average annual interest rate was 3.5%. At December 31, 2008, the commercial paper program had no outstanding balances. The outstanding balance at December 31, 2007 was \$6.7 million at a weighted average interest rate of 5.7%.

## Table of Contents

### **NOTES (continued)**

#### **Southern Power Company and Subsidiary Companies 2008 Annual Report**

##### **Dividend Restrictions**

The Company can only pay dividends to Southern Company out of retained earnings or paid-in-capital.

The Facility and the indenture related to certain series of the Company's senior notes also contain certain limitations on the payment of common stock dividends. No dividends may be paid unless, as of the end of any calendar quarter, the Company's projected cash flows from fixed priced capacity PPAs are at least 80% of total projected cash flows for the next 12 months or the Company's debt to capitalization ratio is no greater than 60%. At December 31, 2008, the Company was in compliance with these ratios and had no other restrictions on its ability to pay dividends.

##### **Financial Instruments**

The Company enters into energy-related derivatives to hedge exposures to electricity, gas, and other fuel price changes. The Company's exposure to market volatility in commodity fuel prices and prices of electricity is limited because its long-term sales contracts shift substantially all fuel cost responsibility to the purchaser. However, the Company has been exposed to market volatility in energy-related commodity prices as a result of sales of uncontracted generating capacity. At December 31, 2008 and 2007, the net fair value of energy-related derivative contracts by hedge designation was reflected in the financial statements as assets/(liabilities) as follows:

	2008	2007
	(in thousands)	
Cash flow hedges	\$ (768)	\$ 78
Non-accounting hedges	4,187	3,293
Net fair value	\$ 3,419	\$ 3,371

Gains and losses on energy-related derivative contracts that are not designated or fail to qualify as hedges are recognized in the statements of income as incurred. Gains and losses on energy-related derivatives designated as cash flow hedges are mainly used to hedge anticipated purchases and sales and are initially deferred in other comprehensive income before being recognized in income in the same period as the hedged transaction. The pre-tax gains/(losses) reclassified from other comprehensive income to revenue and fuel expense were not material for any period presented and are not expected to be material for 2009. Additionally, no material ineffectiveness was recorded in earnings for any period presented. The Company has energy-related hedges in place through 2010. At December 31, 2008, there were approximately 10.9 million of deferred pre-tax realized net hedging gains relating to capitalized costs and revenues during the construction of specific plants. This will be reclassified from other comprehensive income to depreciation and amortization over the remaining life of the respective plants, which ranges from approximately 25 to 31 years. For any year presented, the pre-tax gains reclassified from other comprehensive income to depreciation and amortization have been immaterial.

At December 31, 2008, the Company had no interest derivatives outstanding. The Company has deferred pre-tax realized losses totaling \$3.1 million in other comprehensive income that will be amortized to interest expense through 2016. For the years 2008, 2007, and 2006, approximately \$12.0 million, \$13.3 million, and \$12.0 million, respectively, of pre-tax losses were reclassified from other comprehensive income to interest expense. During 2009, approximately \$10.1 million of pre-tax losses are expected to be reclassified from other comprehensive income to interest expense.

All derivative financial instruments are recognized as either assets or liabilities and are measured at fair value. See Note 8 for additional information.

##### **COMMITMENTS**

###### **Expansion Program**

The capital program of the Company is currently estimated to be \$748.9 million for 2009, \$658.9 million for 2010, and \$768.6 million for 2011. These amounts include estimates for potential plant acquisitions and new construction as well as ongoing capital improvements. Planned expenditures for plant acquisitions may vary due to market opportunities and the Company's ability to execute its growth strategy. Actual construction costs may vary from these estimates because of changes in factors such as: business conditions; environmental statutes and regulations; FERC rules and regulations; load projections; the cost and efficiency of construction labor, equipment, and materials; and the cost of capital.

**NOTES (continued)**

**Southern Power Company and Subsidiary Companies 2008 Annual Report**

**Long-Term Service Agreements**

The Company has entered into Long-Term Service Agreements (LTSAs) with General Electric and Siemens AG for the purpose of securing maintenance support for its combined cycle and combustion turbine generating facilities. In summary, the LTSAs provide that the vendors will perform all planned inspections and certain unplanned maintenance on the covered equipment, which includes the cost of all labor and materials.

Scheduled payments to the vendors, which are subject to price escalation, are made at various intervals based on actual operating hours or number of gas turbine starts of the respective units. Total remaining payments to the vendors under these agreements are currently estimated at \$1.2 billion over the remaining term of the agreements, which may range up to 28 years. However, the LTSAs contain various cancellation provisions at the Company's and the applicable vendor's option. In the event of cancellation prior to scheduled work being performed, the company is entitled to a refund of amounts paid as calculated in accordance with termination provisions of the agreements.

Payments made to the vendors prior to the performance of any planned inspections or unplanned maintenance are recorded as a prepayment in current assets or deferred charges and other assets on the balance sheets and are recorded as payments pursuant to long-term service agreements in the statement of cash flows. Inspection and maintenance costs are capitalized or charged to expense based on the nature of the work when performed. These transactions are non-cash and are not reflected in the statements of cash flows.

**Fuel and Purchased Power Commitments**

SPS, as agent for the traditional operating companies and the Company, has entered into various fuel transportation and procurement agreements to supply a portion of the fuel (primarily natural gas) requirements for the operating facilities. In most cases, these contracts contain provisions for firm transportation costs, storage costs, minimum purchase levels, and other financial commitments.

Natural gas purchase commitments contain given volumes with prices based on various indices at the actual time of delivery; amounts included in the chart below represent estimates based on the New York Mercantile Exchange future prices at December 31, 2008. Also, the Company is entered into various long-term commitments for the purchase of electricity.

Total estimated minimum long-term obligations at December 31, 2008 were as follows:

	Natural Gas Commitments	Purchased Power Commitments (a)
	(in millions)	
2009	139.7	13.6
2010	50.1	49.2
2011	316.2	346.9
2012		
2013		
2014 and beyond		

(a) Represents contractual capacity payments.

Additional commitments for fuel will be required to supply the Company's future needs.

During 2008, the Company entered into agreements to purchase 452 MW of power from three counterparties. Approximately 352 MW of these commitment obligations will be used to serve the Company's requirements service customers. Another power purchase agreement for 100 MW will be resold to EnergyUnited Electric Membership Corporation (EnergyUnited) at cost for the period 2012 through 2021. The purchase power commitments for the EnergyUnited agreement are \$35.4 million in 2012, \$36.1 million in 2013 and \$316.1 million in 2014 and beyond.

In addition, the Company has entered into an agreement to purchase power of up to 200 MW at the discretion of the counterparty for the period 2011 through 2018. There is no contractual capacity payment required under this agreement. Additionally, for all amounts purchased under this arrangement, the Company will pay the counterparty an amount per MW which approximates the Company's cost.

## Table of Contents

### NOTES (continued)

#### Southern Power Company and Subsidiary Companies 2008 Annual Report

acting as an agent for all of Southern Company's traditional operating companies and the Company, SCS may enter into various types of wholesale energy and natural gas contracts. Under these agreements, each of the traditional operating companies and the Company may be jointly and severally liable. The creditworthiness of the Company is currently inferior to the creditworthiness of the traditional operating companies; therefore, Southern Company has entered into keep-well agreements with each of the traditional operating companies to ensure they will not subsidize nor be responsible for any costs, losses, liabilities, or damages resulting from the inclusion of the Company as a contracting party under these agreements.

#### Operating Leases

The Company has operating lease agreements with various terms and expiration dates. Total operating lease expenses were \$0.5 million, \$0.5 million, and \$0.6 million for 2008, 2007, and 2006, respectively. The majority of the lease expense amounts and committed future expenditures are with a joint owner of Plant Stanton Unit A.

At December 31, 2008, estimated minimum rental commitments for noncancelable operating leases were as follows:

	Operating Lease Commitments (in millions)
2009	0.4
2010	0.4
2011	0.4
2012	0.4
2013	0.4
2014 and beyond	22.3
<b>Total</b>	<b>24.3</b>

#### FAIR VALUE MEASUREMENTS

In January 1, 2008, the Company adopted FASB Statement No. 157, "Fair Value Measurements" (SFAS No. 157) which defines fair value, establishes a framework for measuring fair value, and requires additional disclosures about fair value measurements. The criterion that is set forth in SFAS No. 157 is applicable to fair value measurement where it is permitted or required under other accounting pronouncements.

SFAS No. 157 defines fair value as the exit price, which is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The fair value measurement is based on inputs of observable and unobservable market data that a market participant would use in pricing the asset or liability. The use of observable inputs is maximized where available and the use of unobservable inputs is minimized for fair value measurement. As a means to illustrate the inputs used, SFAS No. 157 establishes a three-tier fair value hierarchy that prioritizes inputs to valuation techniques used for fair value measurement.

- Level 1 consists of observable market data in an active market for identical assets or liabilities.
- Level 2 consists of observable market data, other than that included in Level 1, that is either directly or indirectly observable.
- Level 3 consists of unobservable market data. The input may reflect the assumptions of the Company of what a market participant would use in pricing an asset or liability. If there is little available market data, then the Company's own assumptions are the best available information. The need to use unobservable inputs would typically apply to long-term energy-related derivative contracts and generally results from the nature of the energy industry, as each participant forecasts its own power supply and demand and those of other participants, which directly impact the valuation of each unique contract.

In the case of multiple inputs being used in a fair value measurement, the lowest level input that is significant to the fair value measurement presents the level in the fair value hierarchy in which the fair value measurement is reported.

The adoption of SFAS No. 157 has not resulted in any significant changes to the methodologies used for fair value measurement.

Table of Contents

**NOTES (continued)**

**Southern Power Company and Subsidiary Companies 2008 Annual Report**

The fair value measurements performed on a recurring basis and the level of the fair value hierarchy in which they fall at December 31, 2008 are as follows:

At December 31, 2008:	Level 1	Level 2	Level 3	Total
	(in millions)			
Energy-related derivatives	\$ —	\$ 11.1	\$—	\$ 11.1
Cash equivalents	\$ 37.9	\$—	\$—	\$ 37.9
<b>Total fair value</b>	<b>\$ 37.9</b>	<b>\$ 11.1</b>	<b>\$—</b>	<b>\$ 49.0</b>
Energy-related derivatives total fair value	\$ —	\$ 7.7	\$—	\$ 7.7

Energy-related derivatives primarily consist of over-the-counter contracts. See Note 6 under "Financial Instruments" for additional information. The cash equivalents consist of securities with original maturities of 90 days or less. All of these financial instruments and investments are valued primarily using the market approach.

**QUARTERLY FINANCIAL INFORMATION (UNAUDITED)**

Summarized quarterly financial information for 2008 and 2007 is as follows:

Quarter Ended	Operating Revenues	Operating Income	Net Income
	(in thousands)		
March 2008	\$ 216,632	\$ 52,661	\$ 49,975
June 2008	316,584	79,732	35,420
September 2008	513,871	118,292	59,562
December 2008	265,554	61,884	20,402
March 2007	\$ 192,492	\$ 74,517	\$ 32,036
June 2007	244,018	84,840	39,854
September 2007	347,751	107,208	51,438
December 2007	187,753	24,510	8,309

The Company's business is influenced by seasonal weather conditions. Fourth quarter 2007 operating income and net income were impacted by the loss on the gasifier portion of the IGCC project of \$17.6 million pretax and \$10.7 million aftertax.

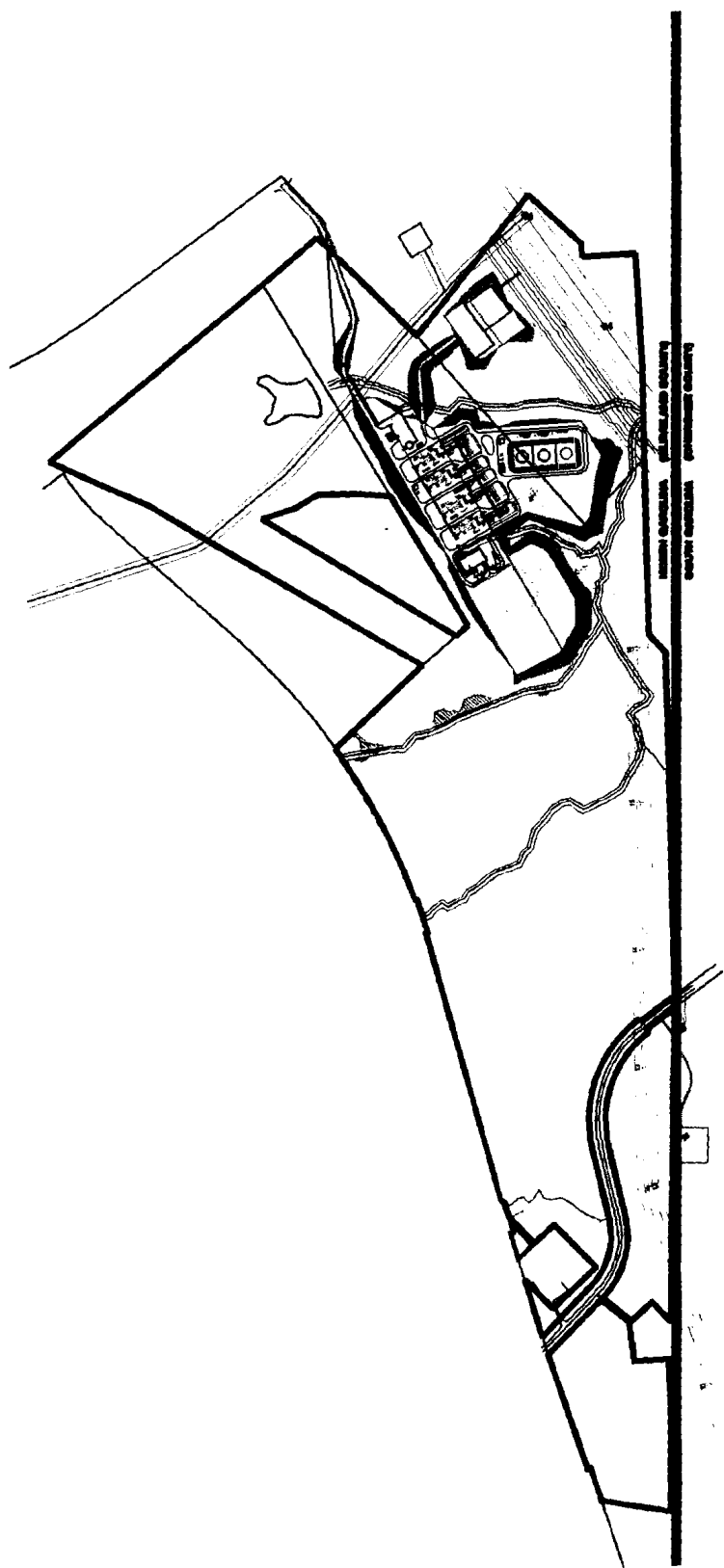
**ELECTED CONSOLIDATED FINANCIAL AND OPERATING DATA 2004-2008**  
Southern Power Company and Subsidiary Companies 2008 Annual Report

	2008	2007	2006	2005	2004
<b>Operating Revenues (in thousands):</b>					
Wholesale — non-affiliates	\$ 667,979	\$ 416,648	\$ 279,384	\$ 223,858	\$ 266,463
Wholesale — affiliates	1,144,161	1,144,161	1,144,161	1,144,161	1,144,161
<b>Total revenues from sales of electricity</b>	<b>1,306,245</b>	<b>963,877</b>	<b>771,146</b>	<b>779,722</b>	<b>691,528</b>
<b>Other revenues</b>	<b>7,206</b>	<b>18,877</b>	<b>1,002</b>	<b>1,788</b>	<b>49,783</b>
<b>Total</b>	<b>\$ 1,313,541</b>	<b>\$ 972,044</b>	<b>\$ 777,048</b>	<b>\$ 781,004</b>	<b>\$ 701,311</b>
<b>Net Income (in thousands):</b>	<b>\$ 144,359</b>	<b>\$ 131,647</b>	<b>\$ 124,469</b>	<b>\$ 119,791</b>	<b>\$ 111,508</b>
<b>Cash Dividends on Common Stock (in thousands):</b>	<b>\$ 94,500</b>	<b>\$ 89,800</b>	<b>\$ 77,700</b>	<b>\$ 72,400</b>	<b>\$ 207,000</b>
<b>Return on Average Common Equity (percent):</b>	<b>10.03</b>	<b>12.82</b>	<b>13.18</b>	<b>13.68</b>	<b>12.28</b>
<b>Total Assets (in thousands):</b>	<b>\$ 2,813,140</b>	<b>\$ 2,768,774</b>	<b>\$ 2,690,943</b>	<b>\$ 2,302,976</b>	<b>\$ 2,067,013</b>
<b>Property, Plant and Equipment Additions (in thousands):</b>	<b>\$ 49,064</b>	<b>\$ 100,193</b>	<b>\$ 46,026</b>	<b>\$ 244,104</b>	<b>\$ 515,606</b>
<b>Capitalization (in thousands):</b>					
Common stock equity	\$ 1,138,361	\$ 1,077,887	\$ 1,025,301	\$ 866,343	\$ 811,611
Long-term debt	1,297,353	1,297,099	1,296,845	1,099,520	1,099,435
<b>Total (excluding amounts due within one year)</b>	<b>\$ 2,435,714</b>	<b>\$ 2,374,986</b>	<b>\$ 2,322,146</b>	<b>\$ 1,965,863</b>	<b>\$ 1,911,046</b>
<b>Capitalization Ratios (percent):</b>					
Common stock equity	46.7	44.1	41.2	41.1	42.3
Long-term debt	53.3	54.6	55.8	55.9	57.5
<b>Total (excluding amounts due within one year)</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Security Ratings:</b>					
Moody's	Baa1	Baa1	Baa1	Baa1	Baa1
Standard and Poors	BBB+	BBB+	BBB+	BBB+	BBB+
Fitch	BBB+	BBB+	BBB+	BBB+	BBB+
<b>Hourly Sales (in thousands):</b>					
Wholesale — non-affiliates	7,573,713	6,985,592	5,093,527	3,932,638	5,369,261
Wholesale — affiliates	9,402,029	10,766,008	8,493,441	12,644,242	8,833,017
<b>Total</b>	<b>16,975,733</b>	<b>17,751,595</b>	<b>13,586,968</b>	<b>10,287,887</b>	<b>11,952,278</b>
<b>Wholesale Revenue from Sales of Electricity (cents)</b>	<b>7.69</b>	<b>7.48</b>	<b>7.43</b>	<b>7.49</b>	<b>7.49</b>
<b>Plant Nameplate Capacity Ratings (year-end) (megawatts)</b>	<b>7,555</b>	<b>6,896</b>	<b>6,733</b>	<b>5,403</b>	<b>4,775</b>
<b>Maximum Peak Hour Demand (megawatts):</b>					
Winter	3,042	2,815	2,780	2,037	2,078
Summer	3,538	3,717	3,862	2,420	2,740
<b>Annual Load Factor (percent)</b>	<b>50.0</b>	<b>48.2</b>	<b>53.6</b>	<b>48.9</b>	<b>54.4</b>
<b>Plant Availability (percent)</b>	<b>96.0</b>	<b>96.7</b>	<b>98.5</b>	<b>97.6</b>	<b>97.7</b>

Source of Energy Supply  
(percent):

From common utilities	74.6	70.4	68.3	72.6	61.9
Purchased power —					
From common utilities	11.3	8.8	9.5	9.8	24.7
From affiliates	13.1	20.8	22.1	17.8	13.4
Total	100.0	100.0	100.0	100.0	100.0





# CHEROKEE COUNTY COUNCIL



## COUNTY COUNCIL

Dist. 1 RUFUS H. FOSTER, JR., VICE-CHAIRMAN  
Dist. 2 H. BAILEY HUMPHRIES  
Dist. 3 QUAY LITTLE  
Dist. 4 TIM SPENCER  
Dist. 5 CHARLES MATHIS, JR.  
Dist. 6 HOKE PARRIS, CHAIRMAN  
Dist. 7 JAMES D. BATCHLER

210 NORTH LIMESTONE STREET  
GAFFNEY, SOUTH CAROLINA 29340-3136

TELEPHONE (864) 487-2560  
TELEFAX (864) 487-2594

INTERIM COUNTY ADMINISTRATOR  
BEN L. CLARY

CLERK TO COUNCIL  
DORIS F. PEARSON

ASSISTANT COUNTY ADMINISTRATOR  
J. HOLLAND BELUE

March 12, 2009

Southern Power Company  
c/o W. Edward Poe, Jr., Esq.  
Parker Poe Adams & Bernstein LLP  
Three Wachovia Center, Suite 3000  
401 South Tryon Street  
Charlotte, N. C. 28202

Re: Mill Creek Road-Electric Transmission Line Crossings

Dear Mr. Poe:

I am writing this letter in my capacity and under my authority as Cherokee County Administrator in response to your request to obtain Cherokee County's consent in the subject matter.

In accordance with Article VIII, Section 15 of the Constitution of the State of South Carolina, Cherokee County hereby consents to the construction and operation of electric transmission lines above and across portions of Mill Creek Road in Cherokee County, South Carolina by Southern Power Company and any subsidiaries, affiliates, successors, heirs and assigns so long as the construction and operation of said transmission lines comports with any requirements for such construction and operation as laid out by the South Carolina Department of Transportation.

Sincerely,

Ben L. Clary  
County Administrator  
Cherokee County

BLC:jmp  
CC: File

**ORIGINAL SERVICE AGREEMENT NO. 410  
UNDER  
FERC ELECTRIC TARIFF SIXTH REVISED VOLUME NO. 4**

**LARGE GENERATOR INTERCONNECTION AGREEMENT  
BETWEEN  
DUKE ENERGY CAROLINAS, LLC  
AND  
SOUTHERN POWER COMPANY**

**EFFECTIVE: December 9, 2008**

## **LARGE GENERATOR INTERCONNECTION AGREEMENT**

**THIS STANDARD LARGE GENERATOR INTERCONNECTION AGREEMENT** ("Agreement") is made and entered into this 9<sup>th</sup> day of December 2008, by and between Southern Power Company, a corporation organized and existing under the laws of the State of Delaware ("Interconnection Customer" with a Large Generating Facility), and Duke Energy Carolinas, LLC, a corporation organized and existing under the laws of the State of North Carolina ("Transmission Provider and/or Transmission Owner"). Interconnection Customer and Transmission Provider each may be referred to as a "Party" or collectively as the "Parties."

### **Recitals**

**WHEREAS**, Transmission Provider operates the Transmission System; and

**WHEREAS**, Interconnection Customer intends to own, lease and/or control and operate the Generating Facility identified as a Large Generating Facility in Appendix C to this Agreement; and,

**WHEREAS**, Interconnection Customer and Transmission Provider have agreed to enter into this Agreement for the purpose of interconnecting the Large Generating Facility with the Transmission System; ,

**NOW, THEREFORE**, in consideration of and subject to the mutual covenants contained herein, it is agreed:

When used in this Standard Large Generator Interconnection Agreement, terms with initial capitalization that are not defined in Article 1 shall have the meanings specified in the Article in which they are used or the Open Access Transmission Tariff (Tariff).

### **Article 1. Definitions**

**Adverse System Impact** shall mean the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of the electric system.

**Affected System** shall mean an electric system other than the Transmission

Provider's Transmission System that may be affected by the proposed interconnection.

**Affected System Operator** shall mean the entity that operates an Affected System.

**Affiliate** shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

**Ancillary Services** shall mean those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider's Transmission System in accordance with Good Utility Practice.

**Applicable Laws and Regulations** shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

**Applicable Reliability Council** shall mean the reliability council applicable to the Transmission System to which the Generating Facility is directly interconnected.

**Applicable Reliability Standards** shall mean the requirements and guidelines of NERC, the Applicable Reliability Council, and the Control Area of the Transmission System to which the Generating Facility is directly interconnected.

**Base Case** shall mean the base case power flow, short circuit, and stability data bases used for the Interconnection Studies by the Transmission Provider or Interconnection Customer.

**Breach** shall mean the failure of a Party to perform or observe any material term or condition of the Standard Large Generator Interconnection Agreement.

**Breaching Party** shall mean a Party that is in Breach of the Standard Large Generator Interconnection Agreement.

**Business Day** shall mean Monday through Friday, excluding Federal Holidays.

**Calendar Day** shall mean any day including Saturday, Sunday or a Federal Holiday.

**Clustering** shall mean the process whereby a group of Interconnection Requests is studied together, instead of serially, for the purpose of conducting the Interconnection System Impact Study.

**Commercial Operation** shall mean the status of a Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation.

**Commercial Operation Date** of a unit shall mean the date on which the Generating Facility commences Commercial Operation as agreed to by the Parties pursuant to Appendix E to the Standard Large Generator Interconnection Agreement.

**Confidential Information** shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise.

**Control Area** shall mean an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Control Areas and contributing to frequency regulation of the interconnection. A Control Area must be certified by the Applicable Reliability Council.

**Default** shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 17 of the Standard Large Generator Interconnection Agreement.

**Dispute Resolution** shall mean the procedure for resolution of a dispute between the Parties in which they will first attempt to resolve the dispute on an informal basis.

**Distribution System** shall mean the Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which distribution systems operate differ among areas.

**Distribution Upgrades** shall mean the additions, modifications, and upgrades to the Transmission Provider's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Generating Facility and render the transmission service necessary to effect Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.

**Effective Date** shall mean the date on which the Standard Large Generator Interconnection Agreement becomes effective upon execution by the Parties subject to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC.

**Emergency Condition** shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of a Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to Transmission Provider's Transmission System, Transmission Provider's Interconnection Facilities or the electric systems of others to which the Transmission Provider's Transmission System is directly connected; or (3) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or Interconnection Customer's Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions; provided, that Interconnection Customer is not obligated by the Standard Large Generator Interconnection Agreement to possess black start capability.

**Energy Resource Interconnection Service** shall mean an Interconnection Service that allows the Interconnection Customer to connect its Generating Facility to the Transmission Provider's Transmission System to be eligible to deliver the Generating Facility's electric output using the existing firm or nonfirm capacity of the Transmission Provider's Transmission System on an as available basis. Energy Resource Interconnection Service in and of itself does not convey transmission service.

**Engineering & Procurement (E&P) Agreement** shall mean an agreement that authorizes the Transmission Provider to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection in order to advance the implementation of the Interconnection Request.

**Environmental Law** shall mean Applicable Laws or Regulations relating to pollution or protection of the environment or natural resources.

**Federal Power Act** shall mean the Federal Power Act, as amended, 16 U.S.C. §§ 791a et seq.

**FERC** shall mean the Federal Energy Regulatory Commission (Commission) or its successor.

**Force Majeure** shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to

machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.

**Generating Facility** shall mean Interconnection Customer's device for the production of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Interconnection Facilities.

**Generating Facility Capacity** shall mean the net capacity of the Generating Facility and the aggregate net capacity of the Generating Facility where it includes multiple energy production devices.

**Good Utility Practice** shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

**Governmental Authority** shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customer, Transmission Provider, or any Affiliate thereof.

**Hazardous Substances** shall mean any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "radioactive substances," "contaminants," "pollutants," "toxic pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

**Initial Synchronization Date** shall mean the date upon which the Generating Facility is initially synchronized and upon which Trial Operation begins.



**In-Service Date** shall mean the date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Transmission Provider's Interconnection Facilities to obtain back feed power.

**Interconnection Customer** shall mean any entity, including the Transmission Provider, Transmission Owner or any of the Affiliates or subsidiaries of either, that proposes to interconnect its Generating Facility with the Transmission Provider's Transmission System.

**Interconnection Customer's Interconnection Facilities** shall mean all facilities and equipment, as identified in Appendix A of the Standard Large Generator Interconnection Agreement, that are located between the Generating Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Customer's Interconnection Facilities are sole use facilities.

**Interconnection Facilities** shall mean the Transmission Provider's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

**Interconnection Facilities Study** shall mean a study conducted by the Transmission Provider or a third party consultant for the Interconnection Customer to determine a list of facilities (including Transmission Provider's Interconnection Facilities and Network Upgrades as identified in the Interconnection System Impact Study), the cost of those facilities, and the time required to interconnect the Generating Facility with the Transmission Provider's Transmission System. The scope of the study is defined in Section 8 of the Standard Large Generator Interconnection Procedures.

**Interconnection Facilities Study Agreement** shall mean the form of agreement contained in Appendix 4 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection Facilities Study.

**Interconnection Feasibility Study** shall mean a preliminary evaluation of the system impact and cost of interconnecting the Generating Facility to the Transmission

Provider's Transmission System, the scope of which is described in Section 6 of the Standard Large Generator Interconnection Procedures.

**Interconnection Feasibility Study Agreement** shall mean the form of agreement contained in Appendix 2 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection Feasibility Study.

**Interconnection Request** shall mean an Interconnection Customer's request, in the form of Appendix 1 to the Standard Large Generator Interconnection Procedures, in accordance with the Tariff, to interconnect a new Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Generating Facility that is interconnected with the Transmission Provider's Transmission System.

**Interconnection Service** shall mean the service provided by the Transmission Provider associated with interconnecting the Interconnection Customer's Generating Facility to the Transmission Provider's Transmission System and enabling it to receive electric energy and capacity from the Generating Facility at the Point of Interconnection, pursuant to the terms of the Standard Large Generator Interconnection Agreement and, if applicable, the Transmission Provider's Tariff.

**Interconnection Study** shall mean any of the following studies: the Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study described in the Standard Large Generator Interconnection Procedures.

**Interconnection System Impact Study** shall mean an engineering study that evaluates the impact of the proposed interconnection on the safety and reliability of Transmission Provider's Transmission System and, if applicable, an Affected System. The study shall identify and detail the system impacts that would result if the Generating Facility were interconnected without project modifications or system modifications, focusing on the Adverse System Impacts identified in the Interconnection Feasibility Study, or to study potential impacts, including but not limited to those identified in the Scoping Meeting as described in the Standard Large Generator Interconnection Procedures.

**Interconnection System Impact Study Agreement** shall mean the form of agreement contained in Appendix 3 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection System Impact Study.

**IRS** shall mean the Internal Revenue Service.

**Joint Operating Committee** shall be a group made up of representatives from Interconnection Customers and the Transmission Provider to coordinate operating and technical considerations of Interconnection Service.

**Large Generating Facility** shall mean a Generating Facility having a Generating Facility Capacity of more than 20 MW.

**Loss** shall mean any and all losses relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's performance, or non-performance of its obligations under the Standard Large Generator Interconnection Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnifying Party.

**Material Modification** shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

**Metering Equipment** shall mean all metering equipment installed or to be installed at the Generating Facility pursuant to the Standard Large Generator Interconnection Agreement at the metering points, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

**NERC** shall mean the North American Electric Reliability Council or its successor organization.

**Network Resource** shall mean any designated generating resource owned, purchased, or leased by a Network Customer under the Network Integration Transmission Service Tariff. Network Resources do not include any resource, or any portion thereof, that is committed for sale to third parties or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis.

**Network Resource Interconnection Service** shall mean an Interconnection Service that allows the Interconnection Customer to integrate its Large Generating Facility with the Transmission Provider's Transmission System (1) in a manner comparable to that in which the Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an RTO or ISO with market based congestion management, in the same manner as Network Resources. Network Resource Interconnection Service in and of itself does not convey transmission service.

**Network Upgrades** shall mean the additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which

the Interconnection Facilities connect to the Transmission Provider's Transmission System to accommodate the interconnection of the Large Generating Facility to the Transmission Provider's Transmission System.

**Notice of Dispute** shall mean a written notice of a dispute or claim that arises out of or in connection with the Standard Large Generator Interconnection Agreement or its performance.

**Optional Interconnection Study** shall mean a sensitivity analysis based on assumptions specified by the Interconnection Customer in the Optional Interconnection Study Agreement.

**Optional Interconnection Study Agreement** shall mean the form of agreement contained in Appendix 5 of the Standard Large Generator Interconnection Procedures for conducting the Optional Interconnection Study.

**Party or Parties** shall mean Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above.

**Point of Change of Ownership** shall mean the point, as set forth in Appendix A to the Standard Large Generator Interconnection Agreement, where the Interconnection Customer's Interconnection Facilities connect to the Transmission Provider's Interconnection Facilities.

**Point of Interconnection** shall mean the point, as set forth in Appendix A to the Standard Large Generator Interconnection Agreement, where the Interconnection Facilities connect to the Transmission Provider's Transmission System.

**Queue Position** shall mean the order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, that is established based upon the date and time of receipt of the valid Interconnection Request by the Transmission Provider.

**Reasonable Efforts** shall mean, with respect to an action required to be attempted or taken by a Party under the Standard Large Generator Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

**Scoping Meeting** shall mean the meeting between representatives of the Interconnection Customer and Transmission Provider conducted for the purpose of discussing alternative interconnection options, to exchange information including any transmission data and earlier study evaluations that would be reasonably expected to

impact such interconnection options, to analyze such information, and to determine the potential feasible Points of Interconnection.

**Site Control** shall mean documentation reasonably demonstrating: (1) ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Generating Facility; (2) an option to purchase or acquire a leasehold site for such purpose; or (3) an exclusivity or other business relationship between Interconnection Customer and the entity having the right to sell, lease or grant Interconnection Customer the right to possess or occupy a site for such purpose.

**Small Generating Facility** shall mean a Generating Facility that has a Generating Facility Capacity of no more than 20 MW.

**Stand Alone Network Upgrades** shall mean Network Upgrades that an Interconnection Customer may construct without affecting day-to-day operations of the Transmission System during their construction. Both the Transmission Provider and the Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify them in Appendix A to the Standard Large Generator Interconnection Agreement.

**Standard Large Generator Interconnection Agreement (LGIA)** shall mean the form of interconnection agreement applicable to an Interconnection Request pertaining to a Large Generating Facility that is included in the Transmission Provider's Tariff.

**Standard Large Generator Interconnection Procedures (LGIP)** shall mean the interconnection procedures applicable to an Interconnection Request pertaining to a Large Generating Facility that are included in the Transmission Provider's Tariff.

**System Protection Facilities** shall mean the equipment, including necessary protection signal communications equipment, required to protect (1) the Transmission Provider's Transmission System from faults or other electrical disturbances occurring at the Generating Facility and (2) the Generating Facility from faults or other electrical system disturbances occurring on the Transmission Provider's Transmission System or on other delivery systems or other generating systems to which the Transmission Provider's Transmission System is directly connected.

**Tariff** shall mean the Transmission Provider's Tariff through which open access transmission service and Interconnection Service are offered, as filed with FERC, and as amended or supplemented from time to time, or any successor tariff.

**Transmission Owner** shall mean an entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at the Point of

Interconnection and may be a Party to the Standard Large Generator Interconnection Agreement to the extent necessary.

**Transmission Provider** shall mean the public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff. The term Transmission Provider should be read to include the Transmission Owner when the Transmission Owner is separate from the Transmission Provider.

**Transmission Provider's Interconnection Facilities** shall mean all facilities and equipment owned, controlled or operated by the Transmission Provider from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A to the Standard Large Generator Interconnection Agreement, including any modifications, additions or upgrades to such facilities and equipment. Transmission Provider's Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

**Transmission System** shall mean the facilities owned, controlled or operated by the Transmission Provider or Transmission Owner that are used to provide transmission service under the Tariff.

**Trial Operation** shall mean the period during which Interconnection Customer is engaged in on-site test operations and commissioning of the Generating Facility prior to Commercial Operation.

## **Article 2. Effective Date, Term, and Termination**

- 2.1 Effective Date.** This LGIA shall become effective upon execution by the Parties subject to acceptance by FERC (if applicable), or if filed unexecuted, upon the date specified by FERC. Transmission Provider shall promptly file this LGIA with FERC upon execution in accordance with Article 3.1, if required.
- 2.2 Term of Agreement.** Subject to the provisions of Article 2.3, this LGIA shall remain in effect for a period of ten (10) years from the Effective Date or such other longer period as Interconnection Customer may request (Term to be specified in individual agreements) and shall be automatically renewed for each successive one-year period thereafter.

## **2.3 Termination Procedures.**

**2.3.1 Written Notice.** This LGIA may be terminated by Interconnection Customer after giving Transmission Provider ninety (90) Calendar Days advance written notice, or by Transmission Provider notifying FERC after the Generating Facility permanently ceases Commercial Operation.

**2.3.2 Default.** Either Party may terminate this LGIA in accordance with Article 17.

**2.3.3** Notwithstanding Articles 2.3.1 and 2.3.2, no termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this LGIA, which notice has been accepted for filing by FERC.

**2.4 Termination Costs.** If a Party elects to terminate this Agreement pursuant to Article 2.3 above, each Party shall pay all costs incurred (including any cancellation costs relating to orders or contracts for Interconnection Facilities and equipment) or charges assessed by the other Party, as of the date of the other Party's receipt of such notice of termination, that are the responsibility of the Terminating Party under this LGIA. In the event of termination by a Party, the Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as a consequence of termination. Upon termination of this LGIA, unless otherwise ordered or approved by FERC:

**2.4.1** With respect to any portion of Transmission Provider's Interconnection Facilities that have not yet been constructed or installed, Transmission Provider shall to the extent possible and with Interconnection Customer's authorization cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, such facilities; provided that in the event Interconnection Customer elects not to authorize such cancellation, Interconnection Customer shall assume all payment obligations with respect to such materials, equipment, and contracts, and Transmission Provider shall deliver such material and equipment, and, if necessary, assign such contracts, to Interconnection Customer as soon as practicable, at Interconnection Customer's expense. To the extent that Interconnection Customer has already paid Transmission Provider for any or all such costs of materials or equipment not taken by Interconnection Customer, Transmission Provider shall promptly refund such amounts to Interconnection Customer, less any costs, including penalties incurred by

Transmission Provider to cancel any pending orders of or return such materials, equipment, or contracts.

If an Interconnection Customer terminates this LGIA, it shall be responsible for all costs incurred in association with that Interconnection Customer's interconnection, including any cancellation costs relating to orders or contracts for Interconnection Facilities and equipment, and other expenses including any Network Upgrades for which Transmission Provider has incurred expenses and has not been reimbursed by Interconnection Customer.

**2.4.2** Transmission Provider may, at its option, retain any portion of such materials, equipment, or facilities that Interconnection Customer chooses not to accept delivery of, in which case Transmission Provider shall be responsible for all costs associated with procuring such materials, equipment, or facilities.

**2.4.3** With respect to any portion of the Interconnection Facilities, and any other facilities already installed or constructed pursuant to the terms of this LGIA, Interconnection Customer shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such materials, equipment, or facilities.

**2.5 Disconnection.** Upon termination of this LGIA, the Parties will take all appropriate steps to disconnect the Large Generating Facility from the Transmission System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this LGIA or such non-terminating Party otherwise is responsible for these costs under this LGIA.

**2.6 Survival.** This LGIA shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder, including billings and payments pursuant to this LGIA; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this LGIA was in effect; and to permit each Party to have access to the lands of the other Party pursuant to this LGIA or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.



### **Article 3. Regulatory Filings**

- 3.1 Filing.** Transmission Provider shall file this LGIA (and any amendment hereto) with the appropriate Governmental Authority, if required. Interconnection Customer may request that any information so provided be subject to the confidentiality provisions of Article 22. If Interconnection Customer has executed this LGIA, or any amendment thereto, Interconnection Customer shall reasonably cooperate with Transmission Provider with respect to such filing and to provide any information reasonably requested by Transmission Provider needed to comply with applicable regulatory requirements.

### **Article 4. Scope of Service**

- 4.1 Interconnection Product Options.** Interconnection Customer has selected the following (checked) type of Interconnection Service: **Network Resource Interconnection Service**

#### **4.1.1 Energy Resource Interconnection Service.**

- 4.1.1.1 The Product.** Energy Resource Interconnection Service allows Interconnection Customer to connect the Large Generating Facility to the Transmission System and be eligible to deliver the Large Generating Facility's output using the existing firm or non-firm capacity of the Transmission System on an "as available" basis. To the extent Interconnection Customer wants to receive Energy Resource Interconnection Service, Transmission Provider shall construct facilities identified in Attachment A.
- 4.1.1.2 Transmission Delivery Service Implications.** Under Energy Resource Interconnection Service, Interconnection Customer will be eligible to inject power from the Large Generating Facility into and deliver power across the interconnecting Transmission Provider's Transmission System on an "as available" basis up to the amount of MWs identified in the applicable stability and steady state studies to the extent the upgrades initially required to qualify for Energy Resource Interconnection Service have been constructed. Where eligible to do so (e.g., PJM, ISO-NE, NYISO), Interconnection Customer may place a bid to sell into the market up to the maximum identified Large Generating

Facility output, subject to any conditions specified in the interconnection service approval, and the Large Generating Facility will be dispatched to the extent Interconnection Customer's bid clears. In all other instances, no transmission delivery service from the Large Generating Facility is assured, but Interconnection Customer may obtain Point-to-Point Transmission Service, Network Integration Transmission Service, or be used for secondary network transmission service, pursuant to Transmission Provider's Tariff, up to the maximum output identified in the stability and steady state studies. In those instances, in order for Interconnection Customer to obtain the right to deliver or inject energy beyond the Large Generating Facility Point of Interconnection or to improve its ability to do so, transmission delivery service must be obtained pursuant to the provisions of Transmission Provider's Tariff. The Interconnection Customer's ability to inject its Large Generating Facility output beyond the Point of Interconnection, therefore, will depend on the existing capacity of Transmission Provider's Transmission System at such time as a transmission service request is made that would accommodate such delivery. The provision of firm Point-to-Point Transmission Service or Network Integration Transmission Service may require the construction of additional Network Upgrades.

✓ 4.1.2      **Network Resource Interconnection Service.**

**4.1.2.1      The Product.** Transmission Provider must conduct the necessary studies and construct the Network Upgrades needed to integrate the Large Generating Facility (1) in a manner comparable to that in which Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an ISO or RTO with market based congestion management, in the same manner as all Network Resources. To the extent Interconnection Customer wants to receive Network Resource Interconnection Service, Transmission Provider shall construct the facilities identified in Attachment A to this LGIA.

**4.1.2.2      Transmission Delivery Service Implications.** Network Resource Interconnection Service allows Interconnection Customer's Large Generating Facility to be designated by any

Network Customer under the Tariff on Transmission Provider's Transmission System as a Network Resource, up to the Large Generating Facility's full output, on the same basis as existing Network Resources interconnected to Transmission Provider's Transmission System, and to be studied as a Network Resource on the assumption that such a designation will occur. Although Network Resource Interconnection Service does not convey a reservation of transmission service, any Network Customer under the Tariff can utilize its network service under the Tariff to obtain delivery of energy from the interconnected Interconnection Customer's Large Generating Facility in the same manner as it accesses Network Resources. A Large Generating Facility receiving Network Resource Interconnection Service may also be used to provide Ancillary Services after technical studies and/or periodic analyses are performed with respect to the Large Generating Facility's ability to provide any applicable Ancillary Services, provided that such studies and analyses have been or would be required in connection with the provision of such Ancillary Services by any existing Network Resource. However, if an Interconnection Customer's Large Generating Facility has not been designated as a Network Resource by any load, it cannot be required to provide Ancillary Services except to the extent such requirements extend to all generating facilities that are similarly situated. The provision of Network Integration Transmission Service or firm Point-to-Point Transmission Service may require additional studies and the construction of additional upgrades. Because such studies and upgrades would be associated with a request for delivery service under the Tariff, cost responsibility for the studies and upgrades would be in accordance with FERC's policy for pricing transmission delivery services.

Network Resource Interconnection Service does not necessarily provide Interconnection Customer with the capability to physically deliver the output of its Large Generating Facility to any particular load on Transmission Provider's Transmission System without incurring congestion costs. In the event of transmission constraints on Transmission Provider's Transmission System, Interconnection Customer's Large Generating Facility shall

be subject to the applicable congestion management procedures in Transmission Provider's Transmission System in the same manner as Network Resources.

There is no requirement either at the time of study or interconnection, or at any point in the future, that Interconnection Customer's Large Generating Facility be designated as a Network Resource by a Network Service Customer under the Tariff or that Interconnection Customer identify a specific buyer (or sink). To the extent a Network Customer does designate the Large Generating Facility as a Network Resource, it must do so pursuant to Transmission Provider's Tariff.

Once an Interconnection Customer satisfies the requirements for obtaining Network Resource Interconnection Service, any future transmission service request for delivery from the Large Generating Facility within Transmission Provider's Transmission System of any amount of capacity and/or energy, up to the amount initially studied, will not require that any additional studies be performed or that any further upgrades associated with such Large Generating Facility be undertaken, regardless of whether or not such Large Generating Facility is ever designated by a Network Customer as a Network Resource and regardless of changes in ownership of the Large Generating Facility. However, the reduction or elimination of congestion or redispatch costs may require additional studies and the construction of additional upgrades.

To the extent Interconnection Customer enters into an arrangement for long term transmission service for deliveries from the Large Generating Facility outside Transmission Provider's Transmission System, such request may require additional studies and upgrades in order for Transmission Provider to grant such request.

- 4.2 **Provision of Service.** Transmission Provider shall provide Interconnection Service for the Large Generating Facility at the Point of Interconnection.
- 4.3 **Performance Standards.** Each Party shall perform all of its obligations under this LGIA in accordance with Applicable Laws and Regulations, Applicable Reliability

Standards, and Good Utility Practice, and to the extent a Party is required or prevented or limited in taking any action by such regulations and standards, such Party shall not be deemed to be in Breach of this LGIA for its compliance therewith. If such Party is a Transmission Provider or Transmission Owner, then that Party shall amend the LGIA and submit the amendment to FERC for approval.

- 4.4 No Transmission Delivery Service.** The execution of this LGIA does not constitute a request for, nor the provision of, any transmission delivery service under Transmission Provider's Tariff, and does not convey any right to deliver electricity to any specific customer or Point of Delivery.
- 4.5 Interconnection Customer Provided Services.** The services provided by Interconnection Customer under this LGIA are set forth in Article 9.6 and Article 13.5.1. Interconnection Customer shall be paid for such services in accordance with Article 11.6.

#### **Article 5. Interconnection Facilities Engineering, Procurement, and Construction**

- 5.1 Options.** Unless otherwise mutually agreed to between the Parties, Interconnection Customer shall select the In-Service Date, Initial Synchronization Date, and Commercial Operation Date; and either Standard Option or Alternate Option set forth below for completion of Transmission Provider's Interconnection Facilities and Network Upgrades as set forth in Appendix A, Interconnection Facilities and Network Upgrades, and such dates and selected option shall be set forth in Appendix B, Milestones.
- 5.1.1 Standard Option.** Transmission Provider shall design, procure, and construct Transmission Provider's Interconnection Facilities and Network Upgrades, using Reasonable Efforts to complete Transmission Provider's Interconnection Facilities and Network Upgrades by the dates set forth in Appendix B, Milestones. Transmission Provider shall not be required to undertake any action which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and Applicable Laws and Regulations. In the event Transmission Provider reasonably expects that it will not be able to complete Transmission Provider's Interconnection Facilities and Network Upgrades by the specified dates, Transmission Provider shall promptly provide written notice to Interconnection Customer and shall undertake Reasonable Efforts to meet the earliest dates thereafter.
- 5.1.2 Alternate Option.** If the dates designated by Interconnection Customer are

acceptable to Transmission Provider, Transmission Provider shall so notify Interconnection Customer within thirty (30) Calendar Days, and shall assume responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities by the designated dates.

If Transmission Provider subsequently fails to complete Transmission Provider's Interconnection Facilities by the In-Service Date, to the extent necessary to provide back feed power; or fails to complete Network Upgrades by the Initial Synchronization Date to the extent necessary to allow for Trial Operation at full power output, unless other arrangements are made by the Parties for such Trial Operation; or fails to complete the Network Upgrades by the Commercial Operation Date, as such dates are reflected in Appendix B, Milestones; Transmission Provider shall pay Interconnection Customer liquidated damages in accordance with Article 5.3, Liquidated Damages, provided, however, the dates designated by Interconnection Customer shall be extended day for day for each day that the applicable RTO or ISO refuses to grant clearances to install equipment.

**5.1.3 Option to Build.** If the dates designated by Interconnection Customer are not acceptable to Transmission Provider, Transmission Provider shall so notify Interconnection Customer within thirty (30) Calendar Days, and unless the Parties agree otherwise, Interconnection Customer shall have the option to assume responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades on the dates specified in Article 5.1.2. Transmission Provider and Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify such Stand Alone Network Upgrades in Appendix A. Except for Stand Alone Network Upgrades, Interconnection Customer shall have no right to construct Network Upgrades under this option.

**5.1.4 Negotiated Option.** If Interconnection Customer elects not to exercise its option under Article 5.1.3, Option to Build, Interconnection Customer shall so notify Transmission Provider within thirty (30) Calendar Days, and the Parties shall in good faith attempt to negotiate terms and conditions (including revision of the specified dates and liquidated damages, the provision of incentives or the procurement and construction of a portion of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades by Interconnection Customer) pursuant to which Transmission Provider is responsible for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Network Upgrades. If the Parties are unable to reach agreement on such

terms and conditions, Transmission Provider shall assume responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Network Upgrades pursuant to 5.1.1, Standard Option.

**5.2 General Conditions Applicable to Option to Build.** If Interconnection Customer assumes responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades,

- (1) Interconnection Customer shall engineer, procure equipment, and construct Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by Transmission Provider;
- (2) Interconnection Customer's engineering, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades shall comply with all requirements of law to which Transmission Provider would be subject in the engineering, procurement or construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;
- (3) Transmission Provider shall review and approve the engineering design, equipment acceptance tests, and the construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;
- (4) prior to commencement of construction, Interconnection Customer shall provide to Transmission Provider a schedule for construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades, and shall promptly respond to requests for information from Transmission Provider;
- (5) at any time during construction, Transmission Provider shall have the right to gain unrestricted access to Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades and to conduct inspections of the same;
- (6) at any time during construction, should any phase of the engineering, equipment procurement, or construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades not meet the standards and specifications provided by Transmission Provider,

Interconnection Customer shall be obligated to remedy deficiencies in that portion of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;

(7) Interconnection Customer shall indemnify Transmission Provider for claims arising from Interconnection Customer's construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades under the terms and procedures applicable to Article 18.1 Indemnity;

(8) Interconnection Customer shall transfer control of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to Transmission Provider;

(9) Unless Parties otherwise agree, Interconnection Customer shall transfer ownership of Transmission Provider's Interconnection Facilities and Stand-Alone Network Upgrades to Transmission Provider;

(10) Transmission Provider shall approve and accept for operation and maintenance Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to the extent engineered, procured, and constructed in accordance with this Article 5.2; and

(11) Interconnection Customer shall deliver to Transmission Provider "as-built" drawings, information, and any other documents that are reasonably required by Transmission Provider to assure that the Interconnection Facilities and Stand-Alone Network Upgrades are built to the standards and specifications required by Transmission Provider.

- 5.3 Liquidated Damages.** The actual damages to Interconnection Customer, in the event Transmission Provider's Interconnection Facilities or Network Upgrades are not completed by the dates designated by Interconnection Customer and accepted by Transmission Provider pursuant to subparagraphs 5.1.2 or 5.1.4, above, may include Interconnection Customer's fixed operation and maintenance costs and lost opportunity costs. Such actual damages are uncertain and impossible to determine at this time. Because of such uncertainty, any liquidated damages paid by Transmission Provider to Interconnection Customer in the event that Transmission Provider does not complete any portion of Transmission Provider's Interconnection Facilities or Network Upgrades by the applicable dates, shall be an amount equal to  $\frac{1}{2}$  of 1 percent per day of the actual cost of Transmission Provider's Interconnection Facilities and Network Upgrades, in the aggregate, for which Transmission Provider has assumed responsibility to design, procure and



construct.

However, in no event shall the total liquidated damages exceed 20 percent of the actual cost of Transmission Provider's Interconnection Facilities and Network Upgrades for which Transmission Provider has assumed responsibility to design, procure, and construct. The foregoing payments will be made by Transmission Provider to Interconnection Customer as just compensation for the damages caused to Interconnection Customer, which actual damages are uncertain and impossible to determine at this time, and as reasonable liquidated damages, but not as a penalty or a method to secure performance of this LGIA. Liquidated damages, when the Parties agree to them, are the exclusive remedy for the Transmission Provider's failure to meet its schedule.

No liquidated damages shall be paid to Interconnection Customer if: (1) Interconnection Customer is not ready to commence use of Transmission Provider's Interconnection Facilities or Network Upgrades to take the delivery of power for the Large Generating Facility's Trial Operation or to export power from the Large Generating Facility on the specified dates, unless Interconnection Customer would have been able to commence use of Transmission Provider's Interconnection Facilities or Network Upgrades to take the delivery of power for Large Generating Facility's Trial Operation or to export power from the Large Generating Facility, but for Transmission Provider's delay; (2) Transmission Provider's failure to meet the specified dates is the result of the action or inaction of Interconnection Customer or any other Interconnection Customer who has entered into an LGIA with Transmission Provider or any cause beyond Transmission Provider's reasonable control or reasonable ability to cure; (3) the Interconnection Customer has assumed responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades; or (4) the Parties have otherwise agreed.

**5.4 Power System Stabilizers.** The Interconnection Customer shall procure, install, maintain and operate Power System Stabilizers in accordance with the guidelines and procedures established by the Applicable Reliability Council. Transmission Provider reserves the right to reasonably establish minimum acceptable settings for any installed Power System Stabilizers, subject to the design and operating limitations of the Large Generating Facility. If the Large Generating Facility's Power System Stabilizers are removed from service or not capable of automatic operation, Interconnection Customer shall immediately notify Transmission Provider's system operator, or its designated representative. The requirements of this paragraph shall not apply to wind generators.

**5.5 Equipment Procurement.** If responsibility for construction of Transmission

Provider's Interconnection Facilities or Network Upgrades is to be borne by Transmission Provider, then Transmission Provider shall commence design of Transmission Provider's Interconnection Facilities or Network Upgrades and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless the Parties otherwise agree in writing:

**5.5.1** Transmission Provider has completed the Facilities Study pursuant to the Facilities Study Agreement;

**5.5.2** Transmission Provider has received written authorization to proceed with design and procurement from Interconnection Customer by the date specified in Appendix B, Milestones; and

**5.5.3** Interconnection Customer has provided security to Transmission Provider in accordance with Article 11.5 by the dates specified in Appendix B, Milestones.

**5.6 Construction Commencement.** Transmission Provider shall commence construction of Transmission Provider's Interconnection Facilities and Network Upgrades for which it is responsible as soon as practicable after the following additional conditions are satisfied:

**5.6.1** Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;

**5.6.2** Necessary real property rights and rights-of-way have been obtained, to the extent required for the construction of a discrete aspect of Transmission Provider's Interconnection Facilities and Network Upgrades;

**5.6.3** Transmission Provider has received written authorization to proceed with construction from Interconnection Customer by the date specified in Appendix B, Milestones; and

**5.6.4** Interconnection Customer has provided security to Transmission Provider in accordance with Article 11.5 by the dates specified in Appendix B, Milestones.

**5.7 Work Progress.** The Parties will keep each other advised periodically as to the progress of their respective design, procurement and construction efforts. Either Party may, at any time, request a progress report from the other Party. If, at any time, Interconnection Customer determines that the completion of Transmission Provider's Interconnection Facilities will not be required until after the specified

In-Service Date, Interconnection Customer will provide written notice to Transmission Provider of such later date upon which the completion of Transmission Provider's Interconnection Facilities will be required.

- 5.8 Information Exchange.** As soon as reasonably practicable after the Effective Date, the Parties shall exchange information regarding the design and compatibility of the Parties' Interconnection Facilities and compatibility of the Interconnection Facilities with Transmission Provider's Transmission System, and shall work diligently and in good faith to make any necessary design changes.
- 5.9 Limited Operation.** If any of Transmission Provider's Interconnection Facilities or Network Upgrades are not reasonably expected to be completed prior to the Commercial Operation Date of the Large Generating Facility, Transmission Provider shall, upon the request and at the expense of Interconnection Customer, perform operating studies on a timely basis to determine the extent to which the Large Generating Facility and Interconnection Customer's Interconnection Facilities may operate prior to the completion of Transmission Provider's Interconnection Facilities or Network Upgrades consistent with Applicable Laws and Regulations, Applicable Reliability Standards, Good Utility Practice, and this LGIA. Transmission Provider shall permit Interconnection Customer to operate the Large Generating Facility and Interconnection Customer's Interconnection Facilities in accordance with the results of such studies.
- 5.10 Interconnection Customer's Interconnection Facilities ('ICIF').** Interconnection Customer shall, at its expense, design, procure, construct, own and install the ICIF, as set forth in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades.
- 5.10.1 Interconnection Customer's Interconnection Facility Specifications.** Interconnection Customer shall submit initial specifications for the ICIF, including System Protection Facilities, to Transmission Provider at least one hundred eighty (180) Calendar Days prior to the Initial Synchronization Date; and final specifications for review and comment at least ninety (90) Calendar Days prior to the Initial Synchronization Date. Transmission Provider shall review such specifications to ensure that the ICIF are compatible with the technical specifications, operational control, and safety requirements of Transmission Provider and comment on such specifications within thirty (30) Calendar Days of Interconnection Customer's submission. All specifications provided hereunder shall be deemed confidential.
- 5.10.2 Transmission Provider's Review.** Transmission Provider's review of Interconnection Customer's final specifications shall not be construed as

confirming, endorsing, or providing a warranty as to the design, fitness, safety, durability or reliability of the Large Generating Facility, or the ICIF. Interconnection Customer shall make such changes to the ICIF as may reasonably be required by Transmission Provider, in accordance with Good Utility Practice, to ensure that the ICIF are compatible with the technical specifications, operational control, and safety requirements of Transmission Provider.

**5.10.3 ICIF Construction.** The ICIF shall be designed and constructed in accordance with Good Utility Practice. Within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Parties agree on another mutually acceptable deadline, Interconnection Customer shall deliver to Transmission Provider "as-built" drawings, information and documents for the ICIF, such as: a one-line diagram, a site plan showing the Large Generating Facility and the ICIF, plan and elevation drawings showing the layout of the ICIF, a relay functional diagram, relaying AC and DC schematic wiring diagrams and relay settings for all facilities associated with Interconnection Customer's step-up transformers, the facilities connecting the Large Generating Facility to the step-up transformers and the ICIF, and the impedances (determined by factory tests) for the associated step-up transformers and the Large Generating Facility. The Interconnection Customer shall provide Transmission Provider specifications for the excitation system, automatic voltage regulator, Large Generating Facility control and protection settings, transformer tap settings, and communications, if applicable.

**5.11 Transmission Provider's Interconnection Facilities Construction.** Transmission Provider's Interconnection Facilities shall be designed and constructed in accordance with Good Utility Practice. Upon request, within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Parties agree on another mutually acceptable deadline, Transmission Provider shall deliver to Interconnection Customer the following "as-built" drawings, information and documents for Transmission Provider's Interconnection Facilities [include appropriate drawings and relay diagrams].

Transmission Provider will obtain control of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades upon completion of such facilities.

**5.12 Access Rights.** Upon reasonable notice and supervision by a Party, and subject to any required or necessary regulatory approvals, a Party ("Granting Party") shall furnish at no cost to the other Party ("Access Party") any rights of use, licenses,

rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain ingress and egress to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) interconnect the Large Generating Facility with the Transmission System; (ii) operate and maintain the Large Generating Facility, the Interconnection Facilities and the Transmission System; and (iii) disconnect or remove the Access Party's facilities and equipment upon termination of this LGIA. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party's business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party.

- 5.13 Lands of Other Property Owners.** If any part of Transmission Provider or Transmission Owner's Interconnection Facilities and/or Network Upgrades is to be installed on property owned by persons other than Interconnection Customer or Transmission Provider or Transmission Owner, Transmission Provider or Transmission Owner shall at Interconnection Customer's expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its Affiliates, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove Transmission Provider or Transmission Owner's Interconnection Facilities and/or Network Upgrades upon such property.
- 5.14 Permits.** Transmission Provider or Transmission Owner and Interconnection Customer shall cooperate with each other in good faith in obtaining all permits, licenses, and authorizations that are necessary to accomplish the interconnection in compliance with Applicable Laws and Regulations. With respect to this paragraph, Transmission Provider or Transmission Owner shall provide permitting assistance to Interconnection Customer comparable to that provided to Transmission Provider's own, or an Affiliate's generation.
- 5.15 Early Construction of Base Case Facilities.** Interconnection Customer may request Transmission Provider to construct, and Transmission Provider shall construct, using Reasonable Efforts to accommodate Interconnection Customer's In-Service Date, all or any portion of any Network Upgrades required for Interconnection Customer to be interconnected to the Transmission System which are included in the Base Case of the Facilities Study for Interconnection Customer, and which also are required to be constructed for another Interconnection Customer, but where such construction is not scheduled to be completed in time to

achieve Interconnection Customer's In-Service Date.

- 5.16 Suspension.** Interconnection Customer reserves the right, upon written notice to Transmission Provider, to suspend at any time all work by Transmission Provider associated with the construction and installation of Transmission Provider's Interconnection Facilities and/or Network Upgrades required under this LGIA with the condition that Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and Transmission Provider's safety and reliability criteria. In such event, Interconnection Customer shall be responsible for all reasonable and necessary costs which Transmission Provider (i) has incurred pursuant to this LGIA prior to the suspension and (ii) incurs in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Transmission Provider cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, Transmission Provider shall obtain Interconnection Customer's authorization to do so.

Transmission Provider shall invoice Interconnection Customer for such costs pursuant to Article 12 and shall use due diligence to minimize its costs. In the event Interconnection Customer suspends work by Transmission Provider required under this LGIA pursuant to this Article 5.16, and has not requested Transmission Provider to recommence the work required under this LGIA on or before the expiration of three (3) years following commencement of such suspension, this LGIA shall be deemed terminated. The three-year period shall begin on the date the suspension is requested, or the date of the written notice to Transmission Provider, if no effective date is specified.

**5.17 Taxes.**

**5.17.1 Interconnection Customer Payments Not Taxable.** The Parties intend that all payments or property transfers made by Interconnection Customer to Transmission Provider for the installation of Transmission Provider's Interconnection Facilities and the Network Upgrades shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the Internal Revenue Code and any applicable state income tax laws.

**5.17.2 Representations and Covenants.** In accordance with IRS Notice 2001-82

and IRS Notice 88-129, Interconnection Customer represents and covenants that (i) ownership of the electricity generated at the Large Generating Facility will pass to another party prior to the transmission of the electricity on the Transmission System, (ii) for income tax purposes, the amount of any payments and the cost of any property transferred to Transmission Provider for Transmission Provider's Interconnection Facilities will be capitalized by Interconnection Customer as an intangible asset and recovered using the straight-line method over a useful life of twenty (20) years, and (iii) any portion of Transmission Provider's Interconnection Facilities that is a "dual-use intertie," within the meaning of IRS Notice 88-129, is reasonably expected to carry only a de minimis amount of electricity in the direction of the Large Generating Facility. For this purpose, "de minimis amount" means no more than 5 percent of the total power flows in both directions, calculated in accordance with the "5 percent test" set forth in IRS Notice 88-129. This is not intended to be an exclusive list of the relevant conditions that must be met to conform to IRS requirements for non-taxable treatment.

At Transmission Provider's request, Interconnection Customer shall provide Transmission Provider with a report from an independent engineer confirming its representation in clause (iii), above. Transmission Provider represents and covenants that the cost of Transmission Provider's Interconnection Facilities paid for by Interconnection Customer will have no net effect on the base upon which rates are determined.

**5.17.3 Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon the Transmission Provider.** Notwithstanding Article 5.17.1, Interconnection Customer shall protect, indemnify and hold harmless Transmission Provider from the cost consequences of any current tax liability imposed against Transmission Provider as the result of payments or property transfers made by Interconnection Customer to Transmission Provider under this LGIA for Interconnection Facilities, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Transmission Provider.

Transmission Provider shall not include a gross-up for the cost consequences of any current tax liability in the amounts it charges Interconnection Customer under this LGIA unless (i) Transmission Provider has determined, in good faith, that the payments or property transfers made by Interconnection Customer to Transmission Provider should be reported as income subject to taxation or (ii) any Governmental Authority directs Transmission Provider to report payments or property as income subject to

taxation; provided, however, that Transmission Provider may require Interconnection Customer to provide security for Interconnection Facilities, in a form reasonably acceptable to Transmission Provider (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences of any current tax liability under this Article 5.17. Interconnection Customer shall reimburse Transmission Provider for such costs on a fully grossed-up basis, in accordance with Article 5.17.4, within thirty (30) Calendar Days of receiving written notification from Transmission Provider of the amount due, including detail about how the amount was calculated.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the ten year testing period and the applicable statute of limitation, as it may be extended by Transmission Provider upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article 5.17.

**5.17.4 Tax Gross-Up Amount.** Interconnection Customer's liability for the cost consequences of any current tax liability under this Article 5.17 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Interconnection Customer will pay Transmission Provider, in addition to the amount paid for the Interconnection Facilities and Network Upgrades, an amount equal to (1) the current taxes imposed on Transmission Provider ("Current Taxes") on the excess of (a) the gross income realized by Transmission Provider as a result of payments or property transfers made by Interconnection Customer to Transmission Provider under this LGIA (without regard to any payments under this Article 5.17) (the "Gross Income Amount") over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the "Present Value Depreciation Amount"), plus (2) an additional amount sufficient to permit Transmission Provider to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Transmission Provider's composite federal and state tax rates at the time the payments or property transfers are received and Transmission Provider will be treated as being subject to tax at the highest marginal rates in effect at that time (the "Current Tax Rate"), and (ii) the Present Value Depreciation Amount shall be computed by discounting Transmission Provider's anticipated tax depreciation deductions as a result of such payments or



property transfers by Transmission Provider's current weighted average cost of capital. Thus, the formula for calculating Interconnection Customer's liability to Transmission Owner pursuant to this Article 5.17.4 can be expressed as follows:  $(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value of Tax Depreciation})) / (1 - \text{Current Tax Rate})$ . Interconnection Customer's estimated tax liability in the event taxes are imposed shall be stated in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades.

**5.17.5 Private Letter Ruling or Change or Clarification of Law.** At

Interconnection Customer's request and expense, Transmission Provider shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Interconnection Customer to Transmission Provider under this LGIA are subject to federal income taxation. Interconnection Customer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Interconnection Customer's knowledge. Transmission Provider and Interconnection Customer shall cooperate in good faith with respect to the submission of such request.

Transmission Provider shall keep Interconnection Customer fully informed of the status of such request for a private letter ruling and shall execute either a privacy act waiver or a limited power of attorney, in a form acceptable to the IRS, that authorizes Interconnection Customer to participate in all discussions with the IRS regarding such request for a private letter ruling. Transmission Provider shall allow Interconnection Customer to attend all meetings with IRS officials about the request and shall permit Interconnection Customer to prepare the initial drafts of any follow-up letters in connection with the request.

**5.17.6 Subsequent Taxable Events.** If, within 10 years from the date on which the relevant Transmission Provider's Interconnection Facilities are placed in service, (i) Interconnection Customer Breaches the covenants contained in Article 5.17.2, (ii) a "disqualification event" occurs within the meaning of IRS Notice 88-129, or (iii) this LGIA terminates and Transmission Provider retains ownership of the Interconnection Facilities and Network Upgrades, Interconnection Customer shall pay a tax gross-up for the cost consequences of any current tax liability imposed on Transmission Provider, calculated using the methodology described in Article 5.17.4 and in accordance with IRS Notice 90-60.

**5.17.7 Contests.** In the event any Governmental Authority determines that Transmission Provider's receipt of payments or property constitutes income that is subject to taxation, Transmission Provider shall notify Interconnection Customer, in writing, within thirty (30) Calendar Days of receiving notification of such determination by a Governmental Authority. Upon the timely written request by Interconnection Customer and at Interconnection Customer's sole expense, Transmission Provider may appeal, protest, seek abatement of, or otherwise oppose such determination. Upon Interconnection Customer's written request and sole expense, Transmission Provider may file a claim for refund with respect to any taxes paid under this Article 5.17, whether or not it has received such a determination. Transmission Provider reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but Transmission Provider shall keep Interconnection Customer informed, shall consider in good faith suggestions from Interconnection Customer about the conduct of the contest, and shall reasonably permit Interconnection Customer or an Interconnection Customer representative to attend contest proceedings.

Interconnection Customer shall pay to Transmission Provider on a periodic basis, as invoiced by Transmission Provider, Transmission Provider's documented reasonable costs of prosecuting such appeal, protest, abatement or other contest. At any time during the contest, Transmission Provider may agree to a settlement either with Interconnection Customer's consent or after obtaining written advice from nationally-recognized tax counsel, selected by Transmission Provider, but reasonably acceptable to Interconnection Customer, that the proposed settlement represents a reasonable settlement given the hazards of litigation. Interconnection Customer's obligation shall be based on the amount of the settlement agreed to by Interconnection Customer, or if a higher amount, so much of the settlement that is supported by the written advice from nationally-recognized tax counsel selected under the terms of the preceding sentence. The settlement amount shall be calculated on a fully grossed-up basis to cover any related cost consequences of the current tax liability. Any settlement without Interconnection Customer's consent or such written advice will relieve Interconnection Customer from any obligation to indemnify Transmission Provider for the tax at issue in the contest.

**5.17.8 Refund.** In the event that (a) a private letter ruling is issued to Transmission Provider which holds that any amount paid or the value of any property transferred by Interconnection Customer to Transmission Provider

under the terms of this LGIA is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling or other determination makes it reasonably clear to Transmission Provider in good faith that any amount paid or the value of any property transferred by Interconnection Customer to Transmission Provider under the terms of this LGIA is not taxable to Transmission Provider, (c) any abatement, appeal, protest, or other contest results in a determination that any payments or transfers made by Interconnection Customer to Transmission Provider are not subject to federal income tax, or (d) if Transmission Provider receives a refund from any taxing authority for any overpayment of tax attributable to any payment or property transfer made by Interconnection Customer to Transmission Provider pursuant to this LGIA, Transmission Provider shall promptly refund to Interconnection Customer the following:

(i) any payment made by Interconnection Customer under this Article 5.17 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon,

(ii) interest on any amount paid by Interconnection Customer to Transmission Provider for such taxes which Transmission Provider did not submit to the taxing authority, calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR § 35.19a(a)(2)(iii) from the date payment was made by Interconnection Customer to the date Transmission Provider refunds such payment to Interconnection Customer, and

(iii) with respect to any such taxes paid by Transmission Provider, any refund or credit Transmission Provider receives or to which it may be entitled from any Governmental Authority, interest (or that portion thereof attributable to the payment described in clause (i), above) owed to Transmission Provider for such overpayment of taxes (including any reduction in interest otherwise payable by Transmission Provider to any Governmental Authority resulting from an offset or credit); provided, however, that Transmission Provider will remit such amount promptly to Interconnection Customer only after and to the extent that Transmission Provider has received a tax refund, credit or offset from any Governmental Authority for any applicable overpayment of income tax related to Transmission Provider's Interconnection Facilities.

The intent of this provision is to leave the Parties, to the extent practicable, in the event that no taxes are due with respect to any payment for

Interconnection Facilities and Network Upgrades hereunder, in the same position they would have been in had no such tax payments been made.

**5.17.9 Taxes Other Than Income Taxes.** Upon the timely request by Interconnection Customer, and at Interconnection Customer's sole expense, Transmission Provider may appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Provider for which Interconnection Customer may be required to reimburse Transmission Provider under the terms of this LGIA. Interconnection Customer shall pay to Transmission Provider on a periodic basis, as invoiced by Transmission Provider, Transmission Provider's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Interconnection Customer and Transmission Provider shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Interconnection Customer to Transmission Provider for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Interconnection Customer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Transmission Provider.

**5.17.10 Transmission Owners Who Are Not Transmission Providers.** If Transmission Provider is not the same entity as the Transmission Owner, then (i) all references in this Article 5.17 to Transmission Provider shall be deemed also to refer to and to include the Transmission Owner, as appropriate, and (ii) this LGIA shall not become effective until such Transmission Owner shall have agreed in writing to assume all of the duties and obligations of Transmission Provider under this Article 5.17 of this LGIA.

**5.18 Tax Status.** Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this LGIA is intended to adversely affect any Transmission Provider's tax exempt status with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

**5.19 Modification.**

**5.19.1 General.** Either Party may undertake modifications to its facilities. If a Party plans to undertake a modification that reasonably may be expected to affect the other Party's facilities, that Party shall provide to the other Party

sufficient information regarding such modification so that the other Party may evaluate the potential impact of such modification prior to commencement of the work. Such information shall be deemed to be confidential hereunder and shall include information concerning the timing of such modifications and whether such modifications are expected to interrupt the flow of electricity from the Large Generating Facility. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party at least ninety (90) Calendar Days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed.

In the case of Large Generating Facility modifications that do not require Interconnection Customer to submit an Interconnection Request, Transmission Provider shall provide, within thirty (30) Calendar Days (or such other time as the Parties may agree), an estimate of any additional modifications to the Transmission System, Transmission Provider's Interconnection Facilities or Network Upgrades necessitated by such Interconnection Customer modification and a good faith estimate of the costs thereof.

**5.19.2 Standards.** Any additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this LGIA and Good Utility Practice.

**5.19.3 Modification Costs.** Interconnection Customer shall not be directly assigned for the costs of any additions, modifications, or replacements that Transmission Provider makes to Transmission Provider's Interconnection Facilities or the Transmission System to facilitate the interconnection of a third party to Transmission Provider's Interconnection Facilities or the Transmission System, or to provide transmission service to a third party under Transmission Provider's Tariff. Interconnection Customer shall be responsible for the costs of any additions, modifications, or replacements to Interconnection Customer's Interconnection Facilities that may be necessary to maintain or upgrade such Interconnection Customer's Interconnection Facilities consistent with Applicable Laws and Regulations, Applicable Reliability Standards or Good Utility Practice.

## **Article 6. Testing and Inspection**

- 6.1 Pre-Commercial Operation Date Testing and Modifications.** Prior to the Commercial Operation Date, Transmission Provider shall test Transmission Provider's Interconnection Facilities and Network Upgrades and Interconnection Customer shall test the Large Generating Facility and Interconnection Customer's Interconnection Facilities to ensure their safe and reliable operation. Similar testing may be required after initial operation. Each Party shall make any modifications to its facilities that are found to be necessary as a result of such testing. Interconnection Customer shall bear the cost of all such testing and modifications. Interconnection Customer shall generate test energy at the Large Generating Facility only if it has arranged for the delivery of such test energy.
- 6.2 Post-Commercial Operation Date Testing and Modifications.** Each Party shall at its own expense perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice as may be necessary to ensure the continued interconnection of the Large Generating Facility with the Transmission System in a safe and reliable manner. Each Party shall have the right, upon advance written notice, to require reasonable additional testing of the other Party's facilities, at the requesting Party's expense, as may be in accordance with Good Utility Practice.
- 6.3 Right to Observe Testing.** Each Party shall notify the other Party in advance of its performance of tests of its Interconnection Facilities. The other Party has the right, at its own expense, to observe such testing.
- 6.4 Right to Inspect.** Each Party shall have the right, but shall have no obligation to: (i) observe the other Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment, including Power System Stabilizers; (ii) review the settings of the other Party's System Protection Facilities and other protective equipment; and (iii) review the other Party's maintenance records relative to the Interconnection Facilities, the System Protection Facilities and other protective equipment. A Party may exercise these rights from time to time as it deems necessary upon reasonable notice to the other Party. The exercise or non-exercise by a Party of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Interconnection Facilities or the System Protection Facilities or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that a Party obtains through the exercise of any of its rights under this Article 6.4 shall be deemed to be Confidential Information and treated pursuant to Article 22 of this LGIA.

## **Article 7. Metering**

- 7.1 General.** Each Party shall comply with the Applicable Reliability Council requirements. Unless otherwise agreed by the Parties, Transmission Provider shall install Metering Equipment at the Point of Interconnection prior to any operation of the Large Generating Facility and shall own, operate, test and maintain such Metering Equipment. Power flows to and from the Large Generating Facility shall be measured at or, at Transmission Provider's option, compensated to, the Point of Interconnection. Transmission Provider shall provide metering quantities, in analog and/or digital form, to Interconnection Customer upon request. Interconnection Customer shall bear all reasonable documented costs associated with the purchase, installation, operation, testing and maintenance of the Metering Equipment.
- 7.2 Check Meters.** Interconnection Customer, at its option and expense, may install and operate, on its premises and on its side of the Point of Interconnection, one or more check meters to check Transmission Provider's meters. Such check meters shall be for check purposes only and shall not be used for the measurement of power flows for purposes of this LGIA, except as provided in Article 7.4 below. The check meters shall be subject at all reasonable times to inspection and examination by Transmission Provider or its designee. The installation, operation and maintenance thereof shall be performed entirely by Interconnection Customer in accordance with Good Utility Practice.
- 7.3 Standards.** Transmission Provider shall install, calibrate, and test revenue quality Metering Equipment in accordance with applicable ANSI standards.
- 7.4 Testing of Metering Equipment.** Transmission Provider shall inspect and test all Transmission Provider-owned Metering Equipment upon installation and at least once every two (2) years thereafter. If requested to do so by Interconnection Customer, Transmission Provider shall, at Interconnection Customer's expense, inspect or test Metering Equipment more frequently than every two (2) years. Transmission Provider shall give reasonable notice of the time when any inspection or test shall take place, and Interconnection Customer may have representatives present at the test or inspection. If at any time Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at Interconnection Customer's expense, in order to provide accurate metering, unless the inaccuracy or defect is due to Transmission Provider's failure to maintain, then Transmission Provider shall pay. If Metering Equipment fails to register, or if the measurement made by Metering Equipment during a test varies by more than two percent from the measurement made by the standard meter used in the test,

Transmission Provider shall adjust the measurements by correcting all measurements for the period during which Metering Equipment was in error by using Interconnection Customer's check meters, if installed. If no such check meters are installed or if the period cannot be reasonably ascertained, the adjustment shall be for the period immediately preceding the test of the Metering Equipment equal to one-half the time from the date of the last previous test of the Metering Equipment.

- 7.5 Metering Data.** At Interconnection Customer's expense, the metered data shall be telemetered to one or more locations designated by Transmission Provider and one or more locations designated by Interconnection Customer. Such telemetered data shall be used, under normal operating conditions, as the official measurement of the amount of energy delivered from the Large Generating Facility to the Point of Interconnection.

## **Article 8. Communications**

- 8.1 Interconnection Customer Obligations.** Interconnection Customer shall maintain satisfactory operating communications with Transmission Provider's Transmission System dispatcher or representative designated by Transmission Provider. Interconnection Customer shall provide standard voice line, dedicated voice line and facsimile communications at its Large Generating Facility control room or central dispatch facility through use of either the public telephone system, or a voice communications system that does not rely on the public telephone system. Interconnection Customer shall also provide the dedicated data circuit(s) necessary to provide Interconnection Customer data to Transmission Provider as set forth in Appendix D, Security Arrangements Details. The data circuit(s) shall extend from the Large Generating Facility to the location(s) specified by Transmission Provider. Any required maintenance of such communications equipment shall be performed by Interconnection Customer. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data.
- 8.2 Remote Terminal Unit.** Prior to the Initial Synchronization Date of the Large Generating Facility, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to the Parties, shall be installed by Interconnection Customer, or by Transmission Provider at Interconnection Customer's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Transmission Provider through use of a dedicated point-to-point data circuit(s) as indicated in Article 8.1. The communication protocol for the data



circuit(s) shall be specified by Transmission Provider. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Transmission Provider.

Each Party will promptly advise the other Party if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions that require the attention and/or correction by the other Party. The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible.

- 8.3 No Annexation.** Any and all equipment placed on the premises of a Party shall be and remain the property of the Party providing such equipment regardless of the mode and manner of annexation or attachment to real property, unless otherwise mutually agreed by the Parties.

## **Article 9. Operations**

**9.1 General.** Each Party shall comply with the Applicable Reliability Council requirements. Each Party shall provide to the other Party all information that may reasonably be required by the other Party to comply with Applicable Laws and Regulations and Applicable Reliability Standards.

**9.2 Control Area Notification.** At least three months before Initial Synchronization Date, Interconnection Customer shall notify Transmission Provider in writing of the Control Area in which the Large Generating Facility will be located. If Interconnection Customer elects to locate the Large Generating Facility in a Control Area other than the Control Area in which the Large Generating Facility is physically located, and if permitted to do so by the relevant transmission tariffs, all necessary arrangements, including but not limited to those set forth in Article 7 and Article 8 of this LGIA, and remote Control Area generator interchange agreements, if applicable, and the appropriate measures under such agreements, shall be executed and implemented prior to the placement of the Large Generating Facility in the other Control Area.

**9.3 Transmission Provider Obligations.** Transmission Provider shall cause the Transmission System and Transmission Provider's Interconnection Facilities to be operated, maintained and controlled in a safe and reliable manner and in accordance with this LGIA. Transmission Provider may provide operating instructions to Interconnection Customer consistent with this LGIA and Transmission Provider's operating protocols and procedures as they may change from time to time. Transmission Provider will consider changes to its operating protocols and procedures proposed by Interconnection Customer.

- 9.4 Interconnection Customer Obligations.** Interconnection Customer shall at its own expense operate, maintain and control the Large Generating Facility and Interconnection Customer's Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA. Interconnection Customer shall operate the Large Generating Facility and Interconnection Customer's Interconnection Facilities in accordance with all applicable requirements of the Control Area of which it is part, as such requirements are set forth in Appendix C, Interconnection Details, of this LGIA. Appendix C, Interconnection Details, will be modified to reflect changes to the requirements as they may change from time to time. Either Party may request that the other Party provide copies of the requirements set forth in Appendix C, Interconnection Details, of this LGIA.
- 9.5 Start-Up and Synchronization.** Consistent with the Parties' mutually acceptable procedures, Interconnection Customer is responsible for the proper synchronization of the Large Generating Facility to Transmission Provider's Transmission System.
- 9.6 Reactive Power.**
- 9.6.1 Power Factor Design Criteria.** Interconnection Customer shall design the Large Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless Transmission Provider has established different requirements that apply to all generators in the Control Area on a comparable basis. The requirements of this paragraph shall not apply to wind generators.
- 9.6.2 Voltage Schedules.** Once Interconnection Customer has synchronized the Large Generating Facility with the Transmission System, Transmission Provider shall require Interconnection Customer to operate the Large Generating Facility to produce or absorb reactive power within the design limitations of the Large Generating Facility set forth in Article 9.6.1 (Power Factor Design Criteria). Transmission Provider's voltage schedules shall treat all sources of reactive power in the Control Area in an equitable and not unduly discriminatory manner. Transmission Provider shall exercise Reasonable Efforts to provide Interconnection Customer with such schedules at least one (1) day in advance, and may make changes to such schedules as necessary to maintain the reliability of the Transmission System. Interconnection Customer shall operate the Large Generating Facility to maintain the specified output voltage or power factor at the Point

of Interconnection within the design limitations of the Large Generating Facility set forth in Article 9.6.1 (Power Factor Design Criteria). If Interconnection Customer is unable to maintain the specified voltage or power factor, it shall promptly notify the System Operator.

**9.6.2.1 Governors and Regulators.** Whenever the Large Generating Facility is operated in parallel with the Transmission System and the speed governors (if installed on the generating unit pursuant to Good Utility Practice) and voltage regulators are capable of operation, Interconnection Customer shall operate the Large Generating Facility with its speed governors and voltage regulators in automatic operation. If the Large Generating Facility's speed governors and voltage regulators are not capable of such automatic operation, Interconnection Customer shall immediately notify Transmission Provider's system operator, or its designated representative, and ensure that such Large Generating Facility's reactive power production or absorption (measured in MVARs) are within the design capability of the Large Generating Facility's generating unit(s) and steady state stability limits. Interconnection Customer shall not cause its Large Generating Facility to disconnect automatically or instantaneously from the Transmission System or trip any generating unit comprising the Large Generating Facility for an under or over frequency condition unless the abnormal frequency condition persists for a time period beyond the limits set forth in ANSI/IEEE Standard C37.106, or such other standard as applied to other generators in the Control Area on a comparable basis.

**9.6.3 Payment for Reactive Power.** Transmission Provider is required to pay Interconnection Customer for reactive power that Interconnection Customer provides or absorbs from the Large Generating Facility when Transmission Provider requests Interconnection Customer to operate its Large Generating Facility outside the range specified in Article 9.6.1, provided that if Transmission Provider pays its own or affiliated generators for reactive power service within the specified range, it must also pay Interconnection Customer. Payments shall be pursuant to Article 11.6 or such other agreement to which the Parties have otherwise agreed.

## **9.7 Outages and Interruptions.**

### **9.7.1 Outages.**

**9.7.1.1 Outage Authority and Coordination.** Each Party may in accordance with Good Utility Practice in coordination with the other Party remove from service any of its respective Interconnection Facilities or Network Upgrades that may impact the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment. Absent an Emergency Condition, the Party scheduling a removal of such facility(ies) from service will use Reasonable Efforts to schedule such removal on a date and time mutually acceptable to the Parties. In all circumstances, any Party planning to remove such facility(ies) from service shall use Reasonable Efforts to minimize the effect on the other Party of such removal.

**9.7.1.2 Outage Schedules.** Transmission Provider shall post scheduled outages of its transmission facilities on the OASIS. Interconnection Customer shall submit its planned maintenance schedules for the Large Generating Facility to Transmission Provider for a minimum of a rolling twenty-four month period. Interconnection Customer shall update its planned maintenance schedules as necessary. Transmission Provider may request Interconnection Customer to reschedule its maintenance as necessary to maintain the reliability of the Transmission System; provided, however, adequacy of generation supply shall not be a criterion in determining Transmission System reliability. Transmission Provider shall compensate Interconnection Customer for any additional direct costs that Interconnection Customer incurs as a result of having to reschedule maintenance, including any additional overtime, breaking of maintenance contracts or other costs above and beyond the cost Interconnection Customer would have incurred absent Transmission Provider's request to reschedule maintenance. Interconnection Customer will not be eligible to receive compensation, if during the twelve (12) months prior to the date of the scheduled maintenance, Interconnection Customer had modified its schedule of maintenance activities.

**9.7.1.3 Outage Restoration.** If an outage on a Party's Interconnection Facilities or Network Upgrades adversely affects the other Party's operations or facilities, the Party that owns or controls the facility that is out of service shall use Reasonable Efforts to promptly restore such facility(ies) to a normal operating condition consistent with the nature of the outage. The Party that owns or controls the facility that is out of service shall provide the other Party, to the extent such information is known, information on the nature of the Emergency Condition, an estimated time of restoration, and any corrective actions required. Initial verbal notice shall be followed up as soon as practicable with written notice explaining the nature of the outage.

**9.7.2 Interruption of Service.** If required by Good Utility Practice to do so, Transmission Provider may require Interconnection Customer to interrupt or reduce deliveries of electricity if such delivery of electricity could adversely affect Transmission Provider's ability to perform such activities as are necessary to safely and reliably operate and maintain the Transmission System. The following provisions shall apply to any interruption or reduction permitted under this Article 9.7.2:

- 9.7.2.1** The interruption or reduction shall continue only for so long as reasonably necessary under Good Utility Practice;
- 9.7.2.2** Any such interruption or reduction shall be made on an equitable, non-discriminatory basis with respect to all generating facilities directly connected to the Transmission System;
- 9.7.2.3** When the interruption or reduction must be made under circumstances which do not allow for advance notice, Transmission Provider shall notify Interconnection Customer by telephone as soon as practicable of the reasons for the curtailment, interruption, or reduction, and, if known, its expected duration. Telephone notification shall be followed by written notification as soon as practicable;
- 9.7.2.4** Except during the existence of an Emergency Condition, when the interruption or reduction can be scheduled without advance notice, Transmission Provider shall notify Interconnection Customer in advance regarding the timing of

such scheduling and further notify Interconnection Customer of the expected duration. Transmission Provider shall coordinate with Interconnection Customer using Good Utility Practice to schedule the interruption or reduction during periods of least impact to Interconnection Customer and Transmission Provider;

**9.7.2.5** The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Large Generating Facility, Interconnection Facilities, and the Transmission System to their normal operating state, consistent with system conditions and Good Utility Practice.

**9.7.3 Under-Frequency and Over Frequency Conditions.** The Transmission System is designed to automatically activate a load-shed program as required by the Applicable Reliability Council in the event of an under-frequency system disturbance. Interconnection Customer shall implement under-frequency and over-frequency relay set points for the Large Generating Facility as required by the Applicable Reliability Council to ensure "ride through" capability of the Transmission System. Large Generating Facility response to frequency deviations of pre-determined magnitudes, both under-frequency and over-frequency deviations, shall be studied and coordinated with Transmission Provider in accordance with Good Utility Practice. The term "ride through" as used herein shall mean the ability of a Generating Facility to stay connected to and synchronized with the Transmission System during system disturbances within a range of under-frequency and over-frequency conditions, in accordance with Good Utility Practice.

**9.7.4 System Protection and Other Control Requirements.**

**9.7.4.1 System Protection Facilities.** Interconnection Customer shall, at its expense, install, operate and maintain System Protection Facilities as a part of the Large Generating Facility or Interconnection Customer's Interconnection Facilities. Transmission Provider shall install at Interconnection Customer's expense any System Protection Facilities that may be required on Transmission Provider's Interconnection Facilities or the Transmission System as a result of the interconnection of the Large Generating Facility and Interconnection Customer's Interconnection Facilities.

- 9.7.4.2** Each Party's protection facilities shall be designed and coordinated with other systems in accordance with Good Utility Practice.
- 9.7.4.3** Each Party shall be responsible for protection of its facilities consistent with Good Utility Practice.
- 9.7.4.4** Each Party's protective relay design shall incorporate the necessary test switches to perform the tests required in Article 6. The required test switches will be placed such that they allow operation of lockout relays while preventing breaker failure schemes from operating and causing unnecessary breaker operations and/or the tripping of Interconnection Customer's units.
- 9.7.4.5** Each Party will test, operate and maintain System Protection Facilities in accordance with Good Utility Practice.
- 9.7.4.6** Prior to the In-Service Date, and again prior to the Commercial Operation Date, each Party or its agent shall perform a complete calibration test and functional trip test of the System Protection Facilities. At intervals suggested by Good Utility Practice and following any apparent malfunction of the System Protection Facilities, each Party shall perform both calibration and functional trip tests of its System Protection Facilities. These tests do not require the tripping of any in-service generation unit. These tests do, however, require that all protective relays and lockout contacts be activated.
- 9.7.5 Requirements for Protection.** In compliance with Good Utility Practice, Interconnection Customer shall provide, install, own, and maintain relays, circuit breakers and all other devices necessary to remove any fault contribution of the Large Generating Facility to any short circuit occurring on the Transmission System not otherwise isolated by Transmission Provider's equipment, such that the removal of the fault contribution shall be coordinated with the protective requirements of the Transmission System. Such protective equipment shall include, without limitation, a disconnecting device or switch with load-interrupting capability located between the Large Generating Facility and the Transmission System at a site selected upon mutual agreement (not to be unreasonably withheld, conditioned or delayed) of the Parties. Interconnection Customer shall be

responsible for protection of the Large Generating Facility and Interconnection Customer's other equipment from such conditions as negative sequence currents, over- or under-frequency, sudden load rejection, over- or under-voltage, and generator loss-of-field. Interconnection Customer shall be solely responsible to disconnect the Large Generating Facility and Interconnection Customer's other equipment if conditions on the Transmission System could adversely affect the Large Generating Facility.

**9.7.6 Power Quality.** Neither Party's facilities shall cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage or current waves as defined by ANSI Standard C84.1-1989, in accordance with IEEE Standard 519, or any applicable superseding electric industry standard. In the event of a conflict between ANSI Standard C84.1-1989, or any applicable superseding electric industry standard, ANSI Standard C84.1-1989, or the applicable superseding electric industry standard, shall control.

**9.8 Switching and Tagging Rules.** Each Party shall provide the other Party a copy of its switching and tagging rules that are applicable to the other Party's activities. Such switching and tagging rules shall be developed on a non-discriminatory basis. The Parties shall comply with applicable switching and tagging rules, as amended from time to time, in obtaining clearances for work or for switching operations on equipment.

**9.9 Use of Interconnection Facilities by Third Parties.**

**9.9.1 Purpose of Interconnection Facilities.** Except as may be required by Applicable Laws and Regulations, or as otherwise agreed to among the Parties, the Interconnection Facilities shall be constructed for the sole purpose of interconnecting the Large Generating Facility to the Transmission System and shall be used for no other purpose.

**9.9.2 Third Party Users.** If required by Applicable Laws and Regulations or if the Parties mutually agree, such agreement not to be unreasonably withheld, to allow one or more third parties to use Transmission Provider's Interconnection Facilities, or any part thereof, Interconnection Customer will be entitled to compensation for the capital expenses it incurred in connection with the Interconnection Facilities based upon the pro rata use of the Interconnection Facilities by Transmission Provider, all third party users, and Interconnection Customer, in accordance with Applicable Laws



and Regulations or upon some other mutually-agreed upon methodology. In addition, cost responsibility for ongoing costs, including operation and maintenance costs associated with the Interconnection Facilities, will be allocated between Interconnection Customer and any third party users based upon the pro rata use of the Interconnection Facilities by Transmission Provider, all third party users, and Interconnection Customer, in accordance with Applicable Laws and Regulations or upon some other mutually agreed upon methodology. If the issue of such compensation or allocation cannot be resolved through such negotiations, it shall be submitted to FERC for resolution.

- 9.10 Disturbance Analysis Data Exchange.** The Parties will cooperate with one another in the analysis of disturbances to either the Large Generating Facility or Transmission Provider's Transmission System by gathering and providing access to any information relating to any disturbance, including information from oscillography, protective relay targets, breaker operations and sequence of events records, and any disturbance information required by Good Utility Practice.

## **Article 10. Maintenance**

- 10.1 Transmission Provider Obligations.** Transmission Provider shall maintain the Transmission System and Transmission Provider's Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA.
- 10.2 Interconnection Customer Obligations.** Interconnection Customer shall maintain the Large Generating Facility and Interconnection Customer's Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA.
- 10.3 Coordination.** The Parties shall confer regularly to coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Large Generating Facility and the Interconnection Facilities.
- 10.4 Secondary Systems.** Each Party shall cooperate with the other in the inspection, maintenance, and testing of control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers that directly affect the operation of a Party's facilities and equipment which may reasonably be expected to impact the other Party. Each Party shall provide advance notice to the other Party before undertaking any work on such circuits, especially on electrical

circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.

- 10.5 Operating and Maintenance Expenses.** Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing interconnection or transmission service to a third party and such third party pays for such expenses, Interconnection Customer shall be responsible for all reasonable expenses including overheads, associated with: (1) owning, operating, maintaining, repairing, and replacing Interconnection Customer's Interconnection Facilities; and (2) operation, maintenance, repair and replacement of Transmission Provider's Interconnection Facilities.

#### **Article 11. Performance Obligation**

- 11.1 Interconnection Customer Interconnection Facilities.** Interconnection Customer shall design, procure, construct, install, own and/or control Interconnection Customer Interconnection Facilities described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades, at its sole expense.
- 11.2 Transmission Provider's Interconnection Facilities.** Transmission Provider or Transmission Owner shall design, procure, construct, install, own and/or control the Transmission Provider's Interconnection Facilities described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades, at the sole expense of the Interconnection Customer.
- 11.3 Network Upgrades and Distribution Upgrades.** Transmission Provider or Transmission Owner shall design, procure, construct, install, and own the Network Upgrades and Distribution Upgrades described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades. The Interconnection Customer shall be responsible for all costs related to Distribution Upgrades. Unless Transmission Provider or Transmission Owner elects to fund the capital for the Network Upgrades, they shall be solely funded by Interconnection Customer.
- 11.4 Transmission Credits.**
- 11.4.1 Repayment of Amounts Advanced for Network Upgrades.**  
Interconnection Customer shall be entitled to a cash repayment, equal to the total amount paid to Transmission Provider and Affected System Operator, if any, for the Network Upgrades, including any tax gross-up or other tax-

related payments associated with Network Upgrades, and not refunded to Interconnection Customer pursuant to Article 5.17.8 or otherwise, to be paid to Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, as payments are made under Transmission Provider's Tariff and Affected System's Tariff for transmission services with respect to the Large Generating Facility. Any repayment shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. § 35.19a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which the Interconnection Customer receives a repayment of such payment pursuant to this subparagraph. Interconnection Customer may assign such repayment rights to any person.

Notwithstanding the foregoing, Interconnection Customer, Transmission Provider, and Affected System Operator may adopt any alternative payment schedule that is mutually agreeable so long as Transmission Provider and Affected System Operator take one of the following actions no later than five years from the Commercial Operation Date: (1) return to Interconnection Customer any amounts advanced for Network Upgrades not previously repaid, or (2) declare in writing that Transmission Provider or Affected System Operator will continue to provide payments to Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, or develop an alternative schedule that is mutually agreeable and provides for the return of all amounts advanced for Network Upgrades not previously repaid; however, full reimbursement shall not extend beyond twenty (20) years from the Commercial Operation Date.

If the Large Generating Facility fails to achieve commercial operation, but it or another Generating Facility is later constructed and makes use of the Network Upgrades, Transmission Provider and Affected System Operator shall at that time reimburse Interconnection Customer for the amounts advanced for the Network Upgrades. Before any such reimbursement can occur, the Interconnection Customer, or the entity that ultimately constructs the Generating Facility, if different, is responsible for identifying the entity to which reimbursement must be made.

**11.4.2 Special Provisions for Affected Systems.** Unless Transmission Provider provides, under the LGIA, for the repayment of amounts advanced to Affected System Operator for Network Upgrades, Interconnection Customer and Affected System Operator shall enter into an agreement that

provides for such repayment. The agreement shall specify the terms governing payments to be made by Interconnection Customer to the Affected System Operator as well as the repayment by the Affected System Operator.

**11.4.3** Notwithstanding any other provision of this LGIA, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that Interconnection Customer, shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain cash reimbursements or transmission credits for transmission service that is not associated with the Large Generating Facility.

**11.5 Provision of Security.** At least thirty (30) Calendar Days prior to the commencement of the procurement, installation, or construction of a discrete portion of a Transmission Provider's Interconnection Facilities, Network Upgrades, or Distribution Upgrades, Interconnection Customer shall provide Transmission Provider, at Interconnection Customer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission Provider and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 14.2.1. Such security for payment shall be in an amount sufficient to cover the costs for constructing, procuring and installing the applicable portion of Transmission Provider's Interconnection Facilities, Network Upgrades, or Distribution Upgrades and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Provider for these purposes.

In addition:

**11.5.1** The guarantee must be made by an entity that meets the creditworthiness requirements of Transmission Provider, and contain terms and conditions that guarantee payment of any amount that may be due from Interconnection Customer, up to an agreed-to maximum amount.

**11.5.2** The letter of credit must be issued by a financial institution reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

**11.5.3** The surety bond must be issued by an insurer reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

**11.6 Interconnection Customer Compensation.** If Transmission Provider requests or directs Interconnection Customer to provide a service pursuant to Articles 9.6.3 (Payment for Reactive Power), or 13.5.1 of this LGIA, Transmission Provider shall compensate Interconnection Customer in accordance with Interconnection Customer's applicable rate schedule then in effect unless the provision of such service(s) is subject to an RTO or ISO FERC-approved rate schedule. Interconnection Customer shall serve Transmission Provider or RTO or ISO with any filing of a proposed rate schedule at the time of such filing with FERC. To the extent that no rate schedule is in effect at the time the Interconnection Customer is required to provide or absorb any Reactive Power under this LGIA, Transmission Provider agrees to compensate Interconnection Customer in such amount as would have been due Interconnection Customer had the rate schedule been in effect at the time service commenced; provided, however, that such rate schedule must be filed at FERC or other appropriate Governmental Authority within sixty (60) Calendar Days of the commencement of service.

**11.6.1 Interconnection Customer Compensation for Actions During Emergency Condition.** Transmission Provider or RTO or ISO shall compensate Interconnection Customer for its provision of real and reactive power and other Emergency Condition services that Interconnection Customer provides to support the Transmission System during an Emergency Condition in accordance with Article 11.6.

## **Article 12. Invoice**

**12.1 General.** Each Party shall submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts a Party owes to the other Party under this LGIA, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party.

**12.2 Final Invoice.** Within six months after completion of the construction of Transmission Provider's Interconnection Facilities and the Network Upgrades, Transmission Provider shall provide an invoice of the final cost of the construction

of Transmission Provider's Interconnection Facilities and the Network Upgrades and shall set forth such costs in sufficient detail to enable Interconnection Customer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Transmission Provider shall refund to Interconnection Customer any amount by which the actual payment by Interconnection Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.

**12.3 Payment.** Invoices shall be rendered to the paying Party at the address specified in Appendix F. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices by either Party will not constitute a waiver of any rights or claims either Party may have under this LGIA.

**12.4 Disputes.** In the event of a billing dispute between Transmission Provider and Interconnection Customer, Transmission Provider shall continue to provide Interconnection Service under this LGIA as long as Interconnection Customer: (i) continues to make all payments not in dispute; and (ii) pays to Transmission Provider or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Interconnection Customer fails to meet these two requirements for continuation of service, then Transmission Provider may provide notice to Interconnection Customer of a Default pursuant to Article 17. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's regulations at 18 CFR § 35.19a(a)(2)(iii).

### **Article 13. Emergencies**

**13.1 Definition.** "Emergency Condition" shall mean a condition or situation: (i) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (ii) that, in the case of Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the Transmission System, Transmission Provider's Interconnection Facilities or the Transmission Systems of others to which the Transmission System is directly connected; or (iii) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or

damage to, the Large Generating Facility or Interconnection Customer's Interconnection Facilities' System restoration and black start shall be considered Emergency Conditions; provided, that Interconnection Customer is not obligated by this LGIA to possess black start capability.

- 13.2 Obligations.** Each Party shall comply with the Emergency Condition procedures of the applicable ISO/RTO, NERC, the Applicable Reliability Council, Applicable Laws and Regulations, and any emergency procedures agreed to by the Joint Operating Committee.
- 13.3 Notice.** Transmission Provider shall notify Interconnection Customer promptly when it becomes aware of an Emergency Condition that affects Transmission Provider's Interconnection Facilities or the Transmission System that may reasonably be expected to affect Interconnection Customer's operation of the Large Generating Facility or Interconnection Customer's Interconnection Facilities. Interconnection Customer shall notify Transmission Provider promptly when it becomes aware of an Emergency Condition that affects the Large Generating Facility or Interconnection Customer's Interconnection Facilities that may reasonably be expected to affect the Transmission System or Transmission Provider's Interconnection Facilities. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of Interconnection Customer's or Transmission Provider's facilities and operations, its anticipated duration and the corrective action taken and/or to be taken. The initial notice shall be followed as soon as practicable with written notice.
- 13.4 Immediate Action.** Unless, in Interconnection Customer's reasonable judgment, immediate action is required, Interconnection Customer shall obtain the consent of Transmission Provider, such consent to not be unreasonably withheld, prior to performing any manual switching operations at the Large Generating Facility or Interconnection Customer's Interconnection Facilities in response to an Emergency Condition either declared by Transmission Provider or otherwise regarding the Transmission System.
- 13.5 Transmission Provider Authority.**
- 13.5.1 General.** Transmission Provider may take whatever actions or inactions with regard to the Transmission System or Transmission Provider's Interconnection Facilities it deems necessary during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the Transmission System or Transmission Provider's

Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service.

Transmission Provider shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Large Generating Facility or Interconnection Customer's Interconnection Facilities. Transmission Provider may, on the basis of technical considerations, require the Large Generating Facility to mitigate an Emergency Condition by taking actions necessary and limited in scope to remedy the Emergency Condition, including, but not limited to, directing Interconnection Customer to shut-down, start-up, increase or decrease the real or reactive power output of the Large Generating Facility; implementing a reduction or disconnection pursuant to Article 13.5.2; directing Interconnection Customer to assist with blackstart (if available) or restoration efforts; or altering the outage schedules of the Large Generating Facility and Interconnection Customer's Interconnection Facilities. Interconnection Customer shall comply with all of Transmission Provider's operating instructions concerning Large Generating Facility real power and reactive power output within the manufacturer's design limitations of the Large Generating Facility's equipment that is in service and physically available for operation at the time, in compliance with Applicable Laws and Regulations.

**13.5.2 Reduction and Disconnection.** Transmission Provider may reduce Interconnection Service or disconnect the Large Generating Facility or Interconnection Customer's Interconnection Facilities, when such, reduction or disconnection is necessary under Good Utility Practice due to Emergency Conditions. These rights are separate and distinct from any right of curtailment of Transmission Provider pursuant to Transmission Provider's Tariff. When Transmission Provider can schedule the reduction or disconnection in advance, Transmission Provider shall notify Interconnection Customer of the reasons, timing and expected duration of the reduction or disconnection. Transmission Provider shall coordinate with Interconnection Customer using Good Utility Practice to schedule the reduction or disconnection during periods of least impact to Interconnection Customer and Transmission Provider. Any reduction or disconnection shall continue only for so long as reasonably necessary under Good Utility Practice. The Parties shall cooperate with each other to restore the Large Generating Facility, the Interconnection Facilities, and the Transmission System to their normal operating state as soon as practicable consistent with Good Utility Practice.



- 13.6 Interconnection Customer Authority.** Consistent with Good Utility Practice and the LGIA and the LGIP, Interconnection Customer may take actions or inactions with regard to the Large Generating Facility or Interconnection Customer's Interconnection Facilities during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the Large Generating Facility or Interconnection Customer's Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service. Interconnection Customer shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Transmission System and Transmission Provider's Interconnection Facilities. Transmission Provider shall use Reasonable Efforts to assist Interconnection Customer in such actions.
- 13.7 Limited Liability.** Except as otherwise provided in Article 11.6.1 of this LGIA, neither Party shall be liable to the other for any action it takes in responding to an Emergency Condition so long as such action is made in good faith and is consistent with Good Utility Practice.

#### **Article 14. Regulatory Requirements and Governing Law**

- 14.1 Regulatory Requirements.** Each Party's obligations under this LGIA shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this LGIA shall require Interconnection Customer to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act, the Public Utility Holding Company Act of 1935, as amended, or the Public Utility Regulatory Policies Act of 1978.
- 14.2 Governing Law.**
- 14.2.1** The validity, interpretation and performance of this LGIA and each of its provisions shall be governed by the laws of the state where the Point of Interconnection is located, without regard to its conflicts of law principles.
- 14.2.2** This LGIA is subject to all Applicable Laws and Regulations.

- 14.2.3** Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

**Article 15. Notices.**

- 15.1 General.** Unless otherwise provided in this LGIA, any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party in writing to the other shall be effective when delivered and may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out in Appendix F, Addresses for Delivery of Notices and Billings.

Either Party may change the notice information in this LGIA by giving five (5) Business Days written notice prior to the effective date of the change.

- 15.2 Billings and Payments.** Billings and payments shall be sent to the addresses set out in Appendix F.
- 15.3 Alternative Forms of Notice.** Any notice or request required or permitted to be given by a Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out in Appendix F.
- 15.4 Operations and Maintenance Notice .** Each Party shall notify the other Party in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to the implementation of Articles 9 and 10.

**Article 16. Force Majeure**

**16.1 Force Majeure.**

**16.1.1** Economic hardship is not considered a Force Majeure event.

**16.1.2** Neither Party shall be considered to be in Default with respect to any obligation hereunder, (including obligations under Article 4), other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of

Force Majeure shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

## **Article 17. Default**

### **17.1 Default**

**17.1.1 General.** No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this LGIA or the result of an act of omission of the other Party. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party. Except as provided in Article 17.1.2, the breaching Party shall have thirty (30) Calendar Days from receipt of the Default notice within which to cure such Breach; provided however, if such Breach is not capable of cure within thirty (30) Calendar Days, the breaching Party shall commence such cure within thirty (30) Calendar Days after notice and continuously and diligently complete such cure within ninety (90) Calendar Days from receipt of the Default notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

**17.1.2 Right to Terminate.** If a Breach is not cured as provided in this article, or if a Breach is not capable of being cured within the period provided for herein, the non-breaching Party shall have the right to declare a Default and terminate this LGIA by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this LGIA, to recover from the breaching Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this LGIA.

## **Article 18. Indemnity, Consequential Damages and Insurance**

**18.1 Indemnity.** The Parties shall at all times indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inactions of its obligations under this LGIA on behalf of the Indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the Indemnified Party.

**18.1.1 Indemnified Person.** If an Indemnified Person is entitled to indemnification under this Article 18 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 18.1, to assume the defense of such claim, such Indemnified Person may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

**18.1.2 Indemnifying Party.** If an Indemnifying Party is obligated to indemnify and hold any Indemnified Person harmless under this Article 18, the amount owing to the Indemnified Person shall be the amount of such Indemnified Person's actual Loss, net of any insurance or other recovery.

**18.1.3 Indemnity Procedures.** Promptly after receipt by an Indemnified Person of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 18.1 may apply, the Indemnified Person shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Person. If the defendants in any such action include one or more Indemnified Persons and the Indemnifying Party and if the Indemnified Person reasonably concludes that there may be legal defenses available to it and/or other Indemnified Persons which are different from or additional to those available to the Indemnifying Party, the Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall

only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Person or Indemnified Persons having such differing or additional legal defenses.

The Indemnified Person shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Person and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Person, or there exists a conflict or adversity of interest between the Indemnified Person and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Person, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Person, which shall not be reasonably withheld, conditioned or delayed.

**18.2 Consequential Damages.** Other than the Liquidated Damages heretofore described, in no event shall either Party be liable under any provision of this LGIA for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

**18.3 Insurance.** Each party shall, at its own expense, maintain in force throughout the period of this LGIA, and until released by the other Party, the following minimum insurance coverages, with insurers authorized to do business in the state where the Point of Interconnection is located:

**18.3.1 Employers' Liability and Workers' Compensation Insurance** providing statutory benefits in accordance with the laws and regulations of the state in which the Point of Interconnection is located.

**18.3.2 Commercial General Liability Insurance** including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual

indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of One Million Dollars (\$1,000,000) per occurrence/One Million Dollars (\$1,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

**18.3.3** Comprehensive Automobile Liability Insurance for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage.

**18.3.4** Excess Public Liability Insurance over and above the Employers' Liability Commercial General Liability and Comprehensive Automobile Liability Insurance coverage, with a minimum combined single limit of Twenty Million Dollars (\$20,000,000) per occurrence/Twenty Million Dollars (\$20,000,000) aggregate.

**18.3.5** The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Public Liability Insurance policies shall name the other Party, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees ("Other Party Group") as additional insured. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this LGIA against the Other Party Group and provide thirty (30) Calendar Days advance written notice to the Other Party Group prior to anniversary date of cancellation or any material change in coverage or condition.

**18.3.6** The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies shall contain provisions that specify that the policies are primary and shall apply to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. Each Party shall be responsible for its respective deductibles or retentions.

**18.3.7** The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for two (2) years after termination of this LGIA, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.

**18.3.8** The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Parties under this LGIA.

**18.3.9** Within ten (10) days following execution of this LGIA, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) days thereafter, each Party shall provide certification of all insurance required in this LGIA, executed by each insurer or by an authorized representative of each insurer.

**18.3.10** Notwithstanding the foregoing, each Party may self-insure to meet the minimum insurance requirements of Articles 18.3.2 through 18.3.8 to the extent it maintains a self-insurance program; provided that, such Party's senior secured debt is rated at investment grade or better by Standard & Poor's and that its self-insurance program meets the minimum insurance requirements of Articles 18.3.2 through 18.3.8. For any period of time that a Party's senior secured debt is unrated by Standard & Poor's or is rated at less than investment grade by Standard & Poor's, such Party shall comply with the insurance requirements applicable to it under Articles 18.3.2 through 18.3.9. In the event that a Party is permitted to self-insure pursuant to this article, it shall notify the other Party that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in Article 18.3.9.

**18.3.11** The Parties agree to report to each other in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this LGIA.

## **Article 19. Assignment**

**19.1 Assignment.** This LGIA may be assigned by either Party only with the written consent of the other; provided that either Party may assign this LGIA without the

consent of the other Party to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this LGIA; and provided further that Interconnection Customer shall have the right to assign this LGIA, without the consent of Transmission Provider, for collateral security purposes to aid in providing financing for the Large Generating Facility, provided that Interconnection Customer will promptly notify Transmission Provider of any such assignment. Any financing arrangement entered into by Interconnection Customer pursuant to this article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify Transmission Provider of the date and particulars of any such exercise of assignment right(s), including providing the Transmission Provider with proof that it meets the requirements of Articles 11.5 and 18.3. Any attempted assignment that violates this article is void and ineffective. Any assignment under this LGIA shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

#### **Article 20. Severability**

- 20.1 Severability.** If any provision in this LGIA is finally determined to be invalid, void or unenforceable by any court or other Governmental Authority having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this LGIA; provided that if Interconnection Customer (or any third party, but only if such third party is not acting at the direction of Transmission Provider) seeks and obtains such a final determination with respect to any provision of the Alternate Option (Article 5.1.2), or the Negotiated Option (Article 5.1.4), then none of these provisions shall thereafter have any force or effect and the Parties' rights and obligations shall be governed solely by the Standard Option (Article 5.1.1).

#### **Article 21. Comparability**

- 21.1 Comparability.** The Parties will comply with all applicable comparability and code of conduct laws, rules and regulations, as amended from time to time.



## **Article 22. Confidentiality**

**22.1 Confidentiality.** Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of this LGIA.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential.

If requested by either Party, the other Party shall provide in writing, the basis for asserting that the information referred to in this Article 22 warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

**22.1.1 Term.** During the term of this LGIA, and for a period of three (3) years after the expiration or termination of this LGIA, except as otherwise provided in this Article 22, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

**22.1.2 Scope.** Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this LGIA; or (6) is required, in accordance with Article 22.1.7 of the LGIA, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this LGIA. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

**22.1.3 Release of Confidential Information.** Neither Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by the Standards of Conduct requirements), subcontractors, employees, consultants, or to parties who may be or considering providing financing to or equity participation with Interconnection Customer, or to potential purchasers or assignees of Interconnection Customer, on a need-to-know basis in connection with this LGIA, unless such person has first been advised of the confidentiality provisions of this Article 22 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 22.

**22.1.4 Rights.** Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

**22.1.5 No Warranties.** By providing Confidential Information, neither Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, neither Party obligates itself to provide any particular information or Confidential Information to the other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

**22.1.6 Standard of Care.** Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under this LGIA or its regulatory requirements.

**22.1.7 Order of Disclosure.** If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of this LGIA. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of

its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

**22.1.8 Termination of Agreement.** Upon termination of this LGIA for any reason, each Party shall, within ten (10) Calendar Days of receipt of a written request from the other Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Party) or return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party.

**22.1.9 Remedies.** The Parties agree that monetary damages would be inadequate to compensate a Party for the other Party's Breach of its obligations under this Article 22. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article 22, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 22, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 22.

**22.1.10 Disclosure to FERC, its Staff, or a State.** Notwithstanding anything in this Article 22 to the contrary, and pursuant to 18 CFR section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this LGIA, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 CFR section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party to this LGIA prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Party to the LGIA when it is notified by FERC or its staff that a request to release Confidential Information has been received by

FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR section 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

**22.1.11** Subject to the exception in Article 22.1.10, any information that a Party claims is competitively sensitive, commercial or financial information under this LGIA ("Confidential Information") shall not be disclosed by the other Party to any person not employed or retained by the other Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this LGIA or as a transmission service provider or a Control Area operator including disclosing the Confidential Information to an RTO or ISO or to a regional or national reliability organization. The Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of the other Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

## **Article 23. Environmental Releases**

**23.1** Each Party shall notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Large Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall: (i) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four hours after such Party becomes aware of the occurrence; and (ii) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

## **Article 24. Information Requirements**

- 24.1 Information Acquisition.** Transmission Provider and Interconnection Customer shall submit specific information regarding the electrical characteristics of their respective facilities to each other as described below and in accordance with Applicable Reliability Standards.
- 24.2 Information Submission by Transmission Provider.** The initial information submission by Transmission Provider shall occur no later than one hundred eighty (180) Calendar Days prior to Trial Operation and shall include Transmission System information necessary to allow Interconnection Customer to select equipment and meet any system protection and stability requirements, unless otherwise agreed to by the Parties. On a monthly basis Transmission Provider shall provide Interconnection Customer a status report on the construction and installation of Transmission Provider's Interconnection Facilities and Network Upgrades, including, but not limited to, the following information: (1) progress to date; (2) a description of the activities since the last report; (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.
- 24.3 Updated Information Submission by Interconnection Customer.** The updated information submission by Interconnection Customer, including manufacturer information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Trial Operation. Interconnection Customer shall submit a completed copy of the Large Generating Facility data requirements contained in Appendix 1 to the LGIP. It shall also include any additional information provided to Transmission Provider for the Feasibility and Facilities Study. Information in this submission shall be the most current Large Generating Facility design or expected performance data. Information submitted for stability models shall be compatible with Transmission Provider standard models. If there is no compatible model, Interconnection Customer will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If Interconnection Customer's data is materially different from what was originally provided to Transmission Provider pursuant to the Interconnection Study Agreement between Transmission Provider and Interconnection Customer, then Transmission Provider will conduct appropriate studies to determine the impact on Transmission Provider Transmission System based on the actual data submitted pursuant to this Article 24.3. The Interconnection Customer shall not begin Trial Operation until such studies are completed.

- 24.4 Information Supplementation.** Prior to the Operation Date, the Parties shall supplement their information submissions described above in this Article 24 with

any and all "as-built" Large Generating Facility information or "as-tested" performance information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist. The Interconnection Customer shall conduct tests on the Large Generating Facility as required by Good Utility Practice such as an open circuit "step voltage" test on the Large Generating Facility to verify proper operation of the Large Generating Facility's automatic voltage regulator.

Unless otherwise agreed, the test conditions shall include: (1) Large Generating Facility at synchronous speed; (2) automatic voltage regulator on and in voltage control mode; and (3) a five percent change in Large Generating Facility terminal voltage initiated by a change in the voltage regulators reference voltage. Interconnection Customer shall provide validated test recordings showing the responses of Large Generating Facility terminal and field voltages. In the event that direct recordings of these voltages is impractical, recordings of other voltages or currents that mirror the response of the Large Generating Facility's terminal or field voltage are acceptable if information necessary to translate these alternate quantities to actual Large Generating Facility terminal or field voltages is provided. Large Generating Facility testing shall be conducted and results provided to Transmission Provider for each individual generating unit in a station.

Subsequent to the Operation Date, Interconnection Customer shall provide Transmission Provider any information changes due to equipment replacement, repair, or adjustment. Transmission Provider shall provide Interconnection Customer any information changes due to equipment replacement, repair or adjustment in the directly connected substation or any adjacent Transmission Provider-owned substation that may affect Interconnection Customer's Interconnection Facilities equipment ratings, protection or operating requirements. The Parties shall provide such information no later than thirty (30) Calendar Days after the date of the equipment replacement, repair or adjustment.

## **Article 25. Information Access and Audit Rights**

**25.1 Information Access.** Each Party (the "disclosing Party") shall make available to the other Party information that is in the possession of the disclosing Party and is necessary in order for the other Party to: (i) verify the costs incurred by the disclosing Party for which the other Party is responsible under this LGIA; and (ii) carry out its obligations and responsibilities under this LGIA. The Parties shall not use such information for purposes other than those set forth in this Article 25.1 and to enforce their rights under this LGIA.

**25.2 Reporting of Non-Force Majeure Events.** Each Party (the “notifying Party”) shall notify the other Party when the notifying Party becomes aware of its inability to comply with the provisions of this LGIA for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this article shall not entitle the Party receiving such notification to allege a cause for anticipatory breach of this LGIA.

**25.3 Audit Rights.** Subject to the requirements of confidentiality under Article 22 of this LGIA, each Party shall have the right, during normal business hours, and upon prior reasonable notice to the other Party, to audit at its own expense the other Party’s accounts and records pertaining to either Party’s performance or either Party’s satisfaction of obligations under this LGIA. Such audit rights shall include audits of the other Party’s costs, calculation of invoiced amounts, Transmission Provider’s efforts to allocate responsibility for the provision of reactive support to the Transmission System, Transmission Provider’s efforts to allocate responsibility for interruption or reduction of generation on the Transmission System, and each Party’s actions in an Emergency Condition. Any audit authorized by this article shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to each Party’s performance and satisfaction of obligations under this LGIA. Each Party shall keep such accounts and records for a period equivalent to the audit rights periods described in Article 25.4.

**25.4 Audit Rights Periods.**

**25.4.1 Audit Rights Period for Construction-Related Accounts and Records.**

Accounts and records related to the design, engineering, procurement, and construction of Transmission Provider’s Interconnection Facilities and Network Upgrades shall be subject to audit for a period of twenty-four months following Transmission Provider’s issuance of a final invoice in accordance with Article 12.2.

**25.4.2 Audit Rights Period for All Other Accounts and Records.**

Accounts and records related to either Party’s performance or satisfaction of all obligations under this LGIA other than those described in Article 25.4.1 shall be subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights period shall be twenty-four months after the auditing Party’s receipt of an invoice giving rise to such cost

obligations; and (ii) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four months after the event for which the audit is sought.

- 25.5 Audit Results.** If an audit by a Party determines that an overpayment or an underpayment has occurred, a notice of such overpayment or underpayment shall be given to the other Party together with those records from the audit which support such determination.

## **Article 26. Subcontractors**

- 26.1 General.** Nothing in this LGIA shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this LGIA; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this LGIA in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.
- 26.2 Responsibility of Principal.** The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this LGIA. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall Transmission Provider be liable for the actions or inactions of Interconnection Customer or its subcontractors with respect to obligations of Interconnection Customer under Article 5 of this LGIA. Any applicable obligation imposed by this LGIA upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.
- 26.3 No Limitation by Insurance.** The obligations under this Article 26 will not be limited in any way by any limitation of subcontractor's insurance.

## **Article 27. Disputes**

- 27.1 Submission.** In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this LGIA or its performance, such Party (the "disputing Party") shall provide the other Party with written notice of the dispute or claim ("Notice of Dispute"). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party.



In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) Calendar Days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this LGIA.

- 27.2 External Arbitration Procedures.** Any arbitration initiated under this LGIA shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) Calendar Days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") and any applicable FERC regulations or RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Article 27, the terms of this Article 27 shall prevail.
- 27.3 Arbitration Decisions.** Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this LGIA and shall have no power to modify or change any provision of this Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Network Upgrades.
- 27.4 Costs.** Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) the cost of the

arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

## **Article 28. Representations, Warranties, and Covenants**

**28.1 General.** Each Party makes the following representations, warranties and covenants:

**28.1.1 Good Standing.** Such Party is duly organized, validly existing and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the state or states in which the Large Generating Facility, Interconnection Facilities and Network Upgrades owned by such Party, as applicable, are located; and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted and to enter into this LGIA and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this LGIA.

**28.1.2 Authority.** Such Party has the right, power and authority to enter into this LGIA, to become a Party hereto and to perform its obligations hereunder. This LGIA is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

**28.1.3 No Conflict.** The execution, delivery and performance of this LGIA does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.

**28.1.4 Consent and Approval.** Such Party has sought or obtained, or, in accordance with this LGIA will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this LGIA, and it will provide to any Governmental Authority notice of any actions under this LGIA that are required by Applicable Laws and Regulations.

## **Article 29. Joint Operating Committee**

**29.1 Joint Operating Committee.** Except in the case of ISOs and RTOs, Transmission Provider shall constitute a Joint Operating Committee to coordinate operating and technical considerations of Interconnection Service. At least six (6) months prior to the expected Initial Synchronization Date, Interconnection Customer and Transmission Provider shall each appoint one representative and one alternate to the Joint Operating Committee. Each Interconnection Customer shall notify Transmission Provider of its appointment in writing. Such appointments may be changed at any time by similar notice. The Joint Operating Committee shall meet as necessary, but not less than once each calendar year, to carry out the duties set forth herein. The Joint Operating Committee shall hold a meeting at the request of either Party, at a time and place agreed upon by the representatives. The Joint Operating Committee shall perform all of its duties consistent with the provisions of this LGIA. Each Party shall cooperate in providing to the Joint Operating Committee all information required in the performance of the Joint Operating Committee's duties. All decisions and agreements, if any, made by the Joint Operating Committee, shall be evidenced in writing. The duties of the Joint Operating Committee shall include the following:

**29.1.1** Establish data requirements and operating record requirements.

**29.1.2** Review the requirements, standards, and procedures for data acquisition equipment, protective equipment, and any other equipment or software.

**29.1.3** Annually review the one (1) year forecast of maintenance and planned outage schedules of Transmission Provider's and Interconnection Customer's facilities at the Point of Interconnection.

**29.1.4** Coordinate the scheduling of maintenance and planned outages on the Interconnection Facilities, the Large Generating Facility and other facilities that impact the normal operation of the interconnection of the Large Generating Facility to the Transmission System.

**29.1.5** Ensure that information is being provided by each Party regarding equipment availability.

**29.1.6** Perform such other duties as may be conferred upon it by mutual agreement of the Parties.

## **Article 30. Miscellaneous**

- 30.1 Binding Effect.** This LGIA and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.
- 30.2 Conflicts.** In the event of a conflict between the body of this LGIA and any attachment, appendices or exhibits hereto, the terms and provisions of the body of this LGIA shall prevail and be deemed the final intent of the Parties.
- 30.3 Rules of Interpretation.** This LGIA, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) the singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this LGIA, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any agreement (including this LGIA), document, instrument or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any Applicable Laws and Regulations means such Applicable Laws and Regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Article, Section or Appendix means such Article of this LGIA or such Appendix to this LGIA, or such Section to the LGIP or such Appendix to the LGIP, as the case may be; (6) "hereunder", "hereof", "herein", "hereto" and words of similar import shall be deemed references to this LGIA as a whole and not to any particular Article or other provision hereof or thereof; (7) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including".
- 30.4 Entire Agreement.** This LGIA, including all Appendices and Schedules attached hereto, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this LGIA. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this LGIA.

**30.5 No Third Party Beneficiaries.** This LGIA is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

**30.6 Waiver.** The failure of a Party to this LGIA to insist, on any occasion, upon strict performance of any provision of this LGIA will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

Any waiver at any time by either Party of its rights with respect to this LGIA shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this LGIA. Termination or Default of this LGIA for any reason by Interconnection Customer shall not constitute a waiver of Interconnection Customer's legal rights to obtain an interconnection from Transmission Provider. Any waiver of this LGIA shall, if requested, be provided in writing.

**30.7 Headings.** The descriptive headings of the various Articles of this LGIA have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this LGIA.

**30.8 Multiple Counterparts.** This LGIA may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

**30.9 Amendment.** The Parties may by mutual agreement amend this LGIA by a written instrument duly executed by the Parties.

**30.10 Modification by the Parties.** The Parties may by mutual agreement amend the Appendices to this LGIA by a written instrument duly executed by the Parties. Such amendment shall become effective and a part of this LGIA upon satisfaction of all Applicable Laws and Regulations.

**30.11 Reservation of Rights.** Transmission Provider shall have the right to make a unilateral filing with FERC to modify this LGIA with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this LGIA pursuant to section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any

such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this LGIA shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

**30.12 No Partnership.** This LGIA shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

IN WITNESS WHEREOF, the Parties have executed this LGIA in duplicate originals, each of which shall constitute and be an original effective Agreement between the Parties.

**DUKE ENERGY CAROLINAS, LLC**

By: Sandra Meyer  
Title: SR. Vice President POWER DELIVERY  
Date: 12-09-2008

Signature: SANDRA P. MEYER

**SOUTHERN POWER COMPANY**

By: Robert G. Moore  
Title: SR. V.P. Southern Power Co.  
Date: 12/10/08

Signature: Robert G. Moore

## **Appendix A to LGIA**

### **Interconnection Facilities, Network Upgrades and Distribution Upgrades**

Pursuant to Section 4.1 of this LGIA, Interconnection Customer has selected Network Resource Interconnection Service. The facilities and upgrades set forth in this Appendix A are required in order for Transmission Provider to provide Network Resource Interconnection Service to Interconnection Customer under this LGIA. Accordingly, Interconnection Customer shall be entitled to receive Network Resource Interconnection Service from Transmission Provider upon completion of the facilities and upgrades set forth in this Appendix A. The NRIS evaluation determined that the full 717 MW can be accepted pursuant this LGIA. The upgrades needed are listed in Appendix A herein.

#### **1. Interconnection Facilities:**

##### **(a) Interconnection Customer's Interconnection Facilities:**

The Interconnection Customer's Interconnection Facilities will consist of four (4) GSU transformers, one (1) 230 kV collector bus, four (4) 230 kV breakers and associated disconnect switches, and one (1) 230 kV bus line including a control circuit from the Generating Facility to the Transmission Provider's Ripp 230 kV transmission substation.

##### **(b) Transmission Provider's Interconnection Facilities:**

None

#### **2. Network Upgrades:**

##### **(a) Stand Alone Network Upgrades:**

None

##### **(b) Other Network Upgrades:**

See 2(b)(A) through 2(b)(D) below.



**A. Modifications to the Transmission Provider's Ripp 230 kV Substation**

Interconnection Customer will interconnect at Transmission Provider's existing Ripp 230 kV Substation. To accommodate the Interconnection Customer's interconnection, this substation will be expanded to accommodate a new single circuit 230 kV bus line. The Ripp 230 kV Substation utilizes a breaker and half scheme. Interconnection Customer's connecting bus line will be connected to both the red and yellow bus. Refer to Exhibit 1 of this Appendix A for the proposed electrical one line of the Ripp 230 kV Substation.

The substation structure shall be a tubular steel design with all power circuit breakers and switches fully rated for ultimate load and fault current levels to which the substation might be exposed. The nominal continuous current ratings of all equipment (based on a nominal operating temperature of key elements at 90° C installed on the Interconnection Customer bus line terminal position shall be 3000 amperes. The breaker installed on the incoming Interconnection Customer bus line will be rated 2 cycle, 3000a, 63ika. All switches will have a minimum momentary rating of 100kA. The voltage rating on all equipment will be 242 kV with a Basic Impulse Insulation Level (BIL) of 900 kV. The breaker will be equipped with appropriate compliment of current transformers to support relay, control and metering functions.

The line terminal currently proposed for the interconnection of the Interconnection Customer bus line assumes Interconnection Customer will enter the Ripp 230 kV Substation with an overhead three phase line with an OPGW shield wire. The catch-off height will be 60 feet. The Interconnection Customer will be responsible for furnishing and installing hardware connecting to the structure and disconnect terminal pad. The Point of Interconnection shall be the line side terminal pad of the line isolating gang switch between Breaker Nos. 6 and 16. This point will also represent the point of change of ownership between the Transmission Provider's facilities and Interconnection Customer's facilities. This location is illustrated on the one-line diagram found in Exhibit 1 of this Appendix A.

At the Point of Interconnection, a group operated isolating switch shall be installed and controlled by the Transmission Provider which will be capable of physically and visibly isolating the Transmission Provider's System from Interconnection Customer's facilities.

**B. Relay, Controls and Communication**

- (a) The 230 kV bus line terminal primary protection at the Ripp 230 kV Substation will consist of line differential relaying, either an SEL-311L or an RFL9300. The communications between the line differential relays will be via fiber optic cable.
- (b) The secondary bus line protective relaying at Ripp 230 kV Substation will consist of an SEL-421 relay for directional over current protection.
- (c) The breaker failure relay protection will consist of an SEL-351 relay for each bus line breaker (2).
- (d) Capacitor Voltage Transformers (CVT) will be installed on all three phases of the bus line for relay input voltages.
- (e) All DC power, control, current transformer and CVT cables to be 1000V shielded. All AC power cables to be 2000V shielded.
- (f) Install a PLC Breaker Annunciator in the bus line breakers Nos. 6 and 16 for alarm monitoring.
- (g) The control power for the electrical equipment will be one 130 volt, 60 cell, flooded lead acid battery bank.

**C. Modifications to the Lower Ninety Nine Island 44 kV Line**

The Ninety Nine Island 44 kV line must be lowered to accommodate the new bus line which connects the Generating Facility to Ripp 230 kV Substation. Two new wood pole 44 kV H-Frames will be installed in the existing line in order to arrange the phase conductors in a horizontal position. Two existing wood pole SASI structures will be removed.

**D. Two Overdutied 100 kV Breakers at Tiger Tie**

With the increased available fault current, certain 100kV breakers connected to lines emanating from Tiger Tie will be subjected to fault currents in excess of their respective interrupting capabilities. The Tiger Black and White 100 kV breakers have an interrupting capability of 50ika. With the Interconnection Customer's additional generation the fault duty will be 50.4ika and require the replacement of both breakers on the Tiger lines. As such, all breakers exceeding their respective interrupting

capabilities will have to be replaced with new breakers. The breakers requiring replacement are summarized in the table below.

The work scope associated with the replacement of each breaker includes the installation of a new breaker base, installation of a new circuit breaker, installation of an SEL2505 Remote I/O Module to monitor critical functions and provide appropriate alarms, a CVT for line side voltage source, replacement of all cable drops, and installing a DDJB termination cabinet for the existing control cables to terminate into and run new cables to reach the location of the new breaker terminal blocks.

Breaker #	Line Name	Mfg & S/N	Breaker Type	Interrupting Rating		Fault Duty
				Initial	Reclose	
1	Tiger White	GE 0139A5396203	Oil	50		50.4
2	Tiger Black	GE 0139A5396211	Oil	50		50.4

Table 1 sets forth the estimated costs of the foregoing Network Upgrades.

**TABLE 1**

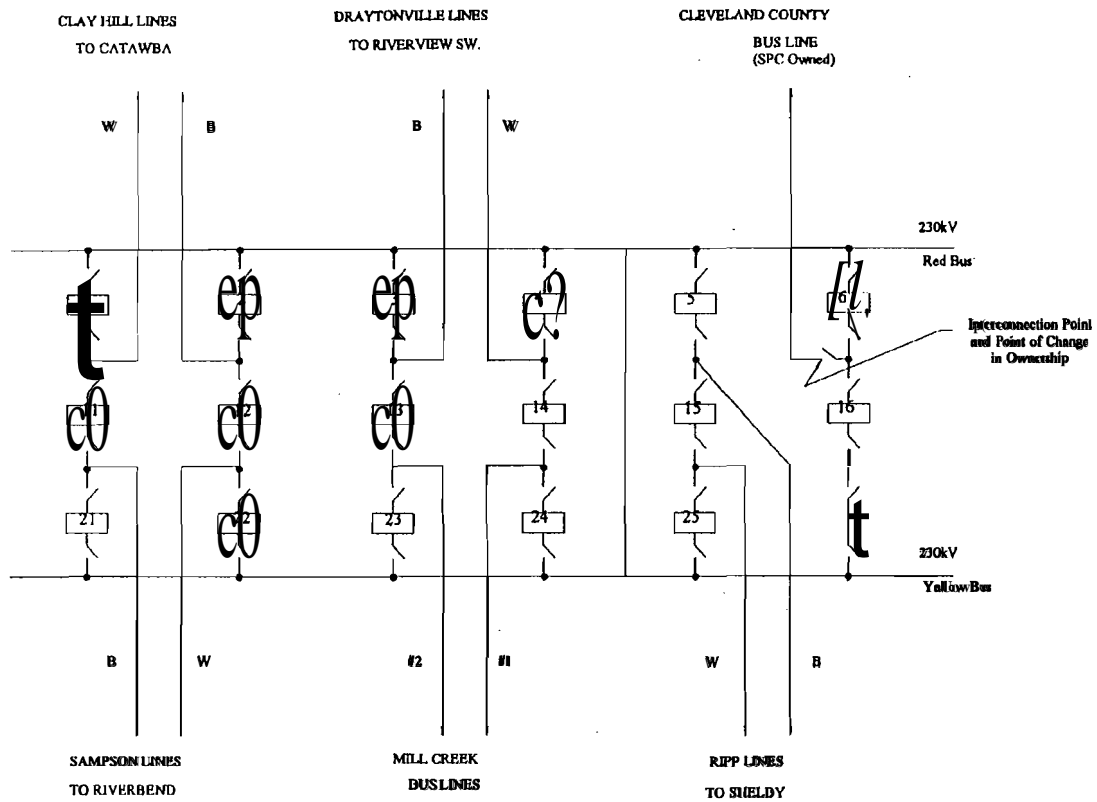
**3. Distribution Upgrades:**

None

**4. Tax Liability:**

None in accordance with the provisions of Article 5.17.4 of this LGIA.

# **Exhibit 1 of Appendix A** **Proposed Electrical One-Line of the Ripp Substation.**



## **Appendix B to LGIA**

### **Milestone Schedule Requirements**

**In-Service Date:** July 1, 2011

**Initial Synchronization Date:** October 1, 2011

**Commercial Operation Date:** January 1, 2012

## **Appendix C to LGIA**

### **Interconnection Details**

Set forth below are the Interconnection Details as referenced in Section 9.4 of this LGIA. Transmission Provider and Interconnection Customer shall mutually agree on any changes to these Interconnection Details prior to their incorporation into this LGIA. To the extent that there is a conflict between these Interconnection Details and the LGIA, the LGIA shall govern to the extent of such conflict.

Generator Details: The Large Generating Facility will be located in Cleveland County, NC and consist of four(4) simple cycle combustion turbines with a combine net capacity summer rating of 717 MW.

Stability: To address stability, the Interconnection Customer will be required to install Out of Step Relay protection to adequately protect their generators for NERC Category D faults. A Power System Stabilizer should be purchased along with each exciter and optionally placed in service.

#### Generator Imbalance Service Arrangements:

Interconnection Customer must demonstrate, to the Transmission Provider's reasonable satisfaction, that it has satisfied the requirements of this Appendix C prior to the submission of any schedules for delivery service to such Transmission Provider identifying the Generating Facility as the Point of Receipt for such scheduled delivery.

Interconnection Customer is responsible for ensuring that its actual Generating Facility output matches the scheduled delivery from the Generating Facility to the Transmission Provider's Transmission System, consistent with the scheduling requirements of the Transmission Provider, including ramping into and out of such scheduled delivery, as measured at the Point of Interconnection, consistent with the scheduling requirements of the Transmission Provider's Tariff and any applicable FERC-approved market structure.

Interconnection Customer shall arrange for a correction in the supply of energy when there is a difference between the actual Generating Facility output and the scheduled delivery from the Generating Facility (the "Generator Imbalance Service Arrangements"). Interconnection Customer may satisfy its obligation for making such Generator Imbalance Service Arrangements by:

- (a) obtaining such service from another entity that (i) has generating resources deliverable within the applicable Control Area, (ii) agrees to assume responsibility for providing such Generator Imbalance Service Arrangements to the Interconnection Customer, and (iii) has appropriate

coordination service arrangements or agreements with the applicable Control Area that addresses Generator Imbalance Service Arrangements for all generating resources for which the entity is responsible within the applicable Control Area;

- (b) committing sufficient additional unscheduled generating resources to the control of and dispatch by the applicable Control Area operator that are capable of supplying energy not supplied by the Interconnection Customer's scheduled Generating Facility, and entering into an appropriate coordination services agreement with the applicable Control Area that addresses Generator Imbalance Service Arrangements obligations for the Generating Facility; or
- (c) entering into an arrangement with another Control Area to dynamically schedule the Interconnection Customer's Generating Facility out of the applicable Control Area and into such other Control Area.

In the event Interconnection Customer fails to demonstrate to the Transmission Provider that it has otherwise complied with this Section B, the Interconnection Customer shall be deemed to satisfy its Generator Imbalance Service obligation by taking service under Schedule 13 of the Tariff.

Facility Connection Requirements: The Transmission Provider's Facility Connection Requirements are attached hereto.

## **Appendix D to LGIA**

### **Security Arrangements Details**

Infrastructure security of Transmission System equipment and operations and control hardware and software is essential to ensure day-to-day Transmission System reliability and operational security. FERC will expect all Transmission Providers, market participants, and Interconnection Customers interconnected to the Transmission System to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities will be expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.



**Appendix E to LGIA**  
**Commercial Operation Date**

This Appendix E is a part of the LGIA between Transmission Provider and Interconnection Customer.

**[Date]**

**[Transmission Provider Address]**

Re: \_\_\_\_\_ Large Generating Facility

Dear \_\_\_\_\_:

On **[Date]** **[Interconnection Customer]** has completed Trial Operation of Unit No. \_\_\_\_\_. This letter confirms that **[Interconnection Customer]** commenced Commercial Operation of Unit No. \_\_\_\_\_ at the Large Generating Facility, effective as of **[Date plus one day]**.

Thank you.

**[Signature]**

**[Interconnection Customer Representative]**

## **Appendix F to LGIA**

### **Addresses for Delivery of Notices and Billings**

#### **Notices:**

Duke Energy Carolinas, LLC  
526 South Church Street EC02A  
Charlotte, NC 28202  
Attn: Charlotte Glassman  
Transmission Contracts Manager  
Phone 704 382-3621  
Fax 704 382-0850  
E-Mail [caglassm@duke-energy.com](mailto:caglassm@duke-energy.com)

With a copy to:  
Duke Energy Corporation  
526 South Church Street  
Charlotte, NC 28201-1244  
Attn: General Counsel

#### **Interconnection Customer:**

Southern Power Company  
600 North 18th Street / 15N-8198  
Birmingham, AL 35291  
Attn: James M. Howell, Jr.  
SPC Transmission Manager  
Phone 205 257-3369  
Fax 205 257-6654  
E-Mail [jmhowell@southernco.com](mailto:jmhowell@southernco.com)

With a copy to:  
Southern Power Company  
600 North 18th Street / 15N-8820  
Birmingham, AL 35291  
Attn: Joe R. Styslinger  
SPC Asset Management & Trading  
Phone 205 257- 6385  
Fax 205 257-6654  
E-Mail [jrstysli@southernco.com](mailto:jrstysli@southernco.com)

**Billings and Payments:**

Transmission Provider:

**Inquiries:**

Duke Energy Carolinas, LLC  
526 South Church Street EC06S  
Charlotte, NC 28202  
Attn: Dan Remlinger  
Phone: 704 382-1440  
Fax 980 373-6860  
E-Mail [daremlinger@dukeenergy.com](mailto:daremlinger@dukeenergy.com)

**Wiring Instructions:**

Bank: PNC Bank

Carolinas, LLC

**Payment by Check:**

Duke Energy Carolinas, LLC  
PO Box 601297  
Charlotte, NC 28260-1297

Interconnection Customer:

Southern Power Company  
PO BOX 59008  
SC BIN 1105  
Atlanta, Ga 30308  
Attn: Kathy Drummond  
SPC Accounts Payable Supervisor  
Phone 404 506-0381  
Fax 404 506-0558  
E-Mail [kwdrummo@southernco.com](mailto:kwdrummo@southernco.com)

With a copy to:  
Southern Power Company  
600 North 18th Street / 15N-8198  
Birmingham, AL 35291  
Attn: James M. Howell, Jr.  
SPC Transmission Manager  
Phone 205 257-3369  
Fax 205 257-6654  
E-Mail [jmhowell@southernco.com](mailto:jmhowell@southernco.com)